

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of

Junk Fax Prevention Act of 2005

Rules and Regulations Implementing the  
Telephone Consumer Protection Act of 1991

CG Docket No. 05-338

CG Docket No. 02-278

**Declaration of Scott Z. Zimmermann in Support of Edward Simon's Comments on  
the Petition for Waiver of the Commission's Rule on Opt-Out Notices on Fax  
Advertisements Filed by Medversant Technologies, LLC**

1. I am an attorney of law duly licensed by the State Bar of California. I am co-counsel with Payne & Fears LLP representing Edward Simon ("Simon"). I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein. I make this declaration in support of Simon's Comments on the Petition for Waiver of the Commission's Rule on Opt-Out Notices on Fax Advertisements Filed by Medversant Technologies, LLC ("Medversant")

2. Attached hereto as Exhibit A is a true and correct copy of Simon's Complaint filed on September 16, 2014, in the Los Angeles Superior Court. Subsequently Defendants removed the action to the United States District Court for the Central District of California. The action was assigned to Judge Beverly Reid O'Connell and given Case No. 2:14-cv-8022 BRO (JCx). Exhibit A is the operative complaint in the action.


3. Attached hereto as Exhibit B is a true and correct copy of the Parties' Initial Rule 26(f) Report filed in the Simon litigation on January 26, 2015, as Dkt. 25.

4. Attached hereto as Exhibit C is a true and correct copy of Defendant Healthways WholeHealth Networks Inc.'s responses to Simon's Interrogatories served in the Simon litigation.

5. Attached hereto as Exhibit D is a true and correct copy of Medversant's responses to Simon's Interrogatories served in the Simon litigation.

6. Attached hereto as Exhibit E is a true and correct copy of a form of Healthways WholeHealth Networks Inc.'s Participating Practitioner Agreement that I received from Simon.

7. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed February 9, 2015, at Santa Monica, California.

  
\_\_\_\_\_  
Scott Z. Zimmermann

**EXHIBIT "A"**

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

SEP 16 2014

Sherri R. Carter, Executive Officer/Clerk  
By Myrna Beltran, Deputy

Law Offices of Scott Z. Zimmermann  
Scott Z. Zimmermann, SBN 78694  
szimm@zkcfc.com  
601 S. Figueroa Street, Suite 2610  
Los Angeles, California 90017  
Telephone: (213) 452-6509  
Facsimile: (213) 622-2171

Payne & Fears LLP  
C. Darryl Cordero, SBN 126689  
cdc@paynefears.com  
Eric M. Kennedy, SBN 228393  
emk@paynefears.com  
801 S. Figueroa Street, Suite 1150  
Los Angeles, California 90017  
Telephone: (213) 439-9911  
Facsimile: (213) 439-9922

Attorneys for Plaintiff  
Edward Simon, DC,  
and for all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

**BC557772**

EDWARD SIMON, DC, individually  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

HEALTHWAYS, INC., a Delaware  
corporation; HEALTHWAYS  
WHOLEHEALTH NETWORKS, INC.,  
a Delaware corporation;  
MEDVERSANT TECHNOLOGIES,  
L.L.C., a California limited liability  
company; and DOES 1 through 1,000,  
inclusive,

Defendants.

Case No.

**CLASS ACTION**

**Complaint for Violations of the Junk  
Fax Prevention Act (47 U.S.C. § 227)  
and 47 C.F.R. § 64.1200); Demand for  
Jury Trial; Exhibit**

**[CAL. CIV. PROC. CODE §§ 382, 410;  
CAL. R. CT. 3.760]**

Plaintiff Edward Simon, DC ("Plaintiff"), brings this action on behalf of  
himself and all others similarly situated, and alleges:



## Introduction

1. More than two decades ago the Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 ("TCPA") was enacted into law. The law responded to widespread complaints by American consumers and businesses about the cost, disruption and nuisance imposed by junk faxes. The law prohibited the transmission of facsimile advertising without first obtaining the express invitation or permission of the recipient. Despite its passage, consumers and businesses continued to be besieged with junk faxes. In 2005 Congress responded by strengthening the law by amending the TCPA through the Junk Fax Prevention Act of 2005 (collectively "JFPA" or the "Act").<sup>1</sup> As amended, the law requires a sender to include on its fax advertisements a clear and conspicuous notice that discloses to recipients their right to stop future faxes and explains how to exercise that right.

2. Plaintiff brings this class action to recover damages for and to enjoin junk faxing by Defendants in violation of the JFPA and the regulations of the Federal Communications Commission ("FCC") promulgated under the Act. Plaintiff is informed and believes, and upon such information and belief alleges, that Defendants have, commencing within four years preceding the filing of this action, transmitted fax advertisements in violation of the JFPA and FCC regulations. Defendants' violations include, but are not limited to, the facsimile transmission of an advertisement on August 13, 2014, sent to Plaintiff's telephone facsimile machine via Plaintiff's facsimile telephone number, a true and correct copy of which advertisement is attached as Exhibit 1 hereto.

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<sup>1</sup> Unless otherwise noted, all statutory references are to this statute in effect since 2005.

4. **Personal Jurisdiction.** This Court has personal jurisdiction over Defendants because they each (i) regularly conduct business within the state of California; (ii) directed the fax advertisements that are the subject of this Complaint to recipients within the state of California; and (iii) committed at least some of their violations of the JFPA and/or FCC regulations within the state of California.

5. **Individual Plaintiff/Class Representative.** Plaintiff Edward Simon, DC, is, and at all times relevant hereto was, a chiropractor, doing business within this County at premises located in North Hollywood, and the subscriber of the facsimile telephone number, (818) 761-8705, to which junk fax advertisements, including Exhibit 1, were sent by Defendants.

6. **Defendant Healthways, Inc.** Plaintiff is informed and believes, and upon such information and belief alleges, that Defendant Healthways, Inc. (“Healthways Parent”) is, and at all times relevant hereto was, a corporation organized and existing under the laws of the state of Delaware and a public company trading on NASDAQ.

1           7.     **Defendant Healthways WholeHealth Networks, Inc.** Plaintiff is  
2 informed and believes, and upon such information and belief alleges, that Defendant  
3 Healthways WholeHealth Networks, Inc. ("Healthways") is, and at all times  
4 relevant hereto was, a corporation organized and existing under the laws of the state  
5 of Delaware and a wholly-owned subsidiary of Healthways Parent.

6  
7           8.     **Defendant Medversant Technologies, L.L.C.** Plaintiff is informed  
8 and believes, and upon such information and belief alleges, that Defendant  
9 Medversant Technologies, L.L.C. ("Medversant") is, and at all times relevant hereto  
10 was, a limited liability company organized and existing under the laws of the state  
11 of California, with its principal offices located within this County.

12  
13          9.     **Defendant Does 1 Through 1,000.** Plaintiff is unaware of the true  
14 names and capacities of Does 1 through 1,000, inclusive, and therefore sues such  
15 defendants by their fictitious names. Plaintiff will amend this Complaint to show  
16 the true names and capacities of the fictitiously named defendants when they are  
17 ascertained.

18  
19          10.    As used herein, the term "Defendants" refers, jointly and severally, to  
20 Defendants Healthways Parent, Healthways, Medversant and Does 1 through 1,000,  
21 inclusive, and the term "Defendant" refers singularly to any of the Defendants.

22  
23                   **The JFPA's Prohibition Against Junk Faxing**

24  
25          11.    By the early 1990s, advertisers had exploited facsimile telephone  
26 technology to blanket the country with junk fax advertisements. This practice  
27 imposed tremendous disruption, annoyance, and cost on American consumers and  
28 businesses. Among other things, junk faxes tie up recipients' telephone lines and

1 facsimile machines, misappropriate and convert recipients' fax paper and toner, and  
 2 require recipients to sort through faxes to separate legitimate faxes from junk faxes,  
 3 and to discard the latter. Congress responded to the problem by passing the TCPA.  
 4 The law was enacted to eradicate "the explosive growth in unsolicited facsimile  
 5 advertising, or 'junk fax.'" H.R. Rep. No. 102-317 (1991).

6  
 7 12. The original law did not achieve its objectives, however. In the decade  
 8 following the law's enactment, however, American consumers and businesses  
 9 continued to be "besieged" by junk faxes because senders refused to honor requests  
 10 by recipients to stop.<sup>2</sup> Congress responded by strengthening the law by amending it  
 11 through the JFPA. The JFPA, for the first time, required senders to disclose on their  
 12 fax advertisements that recipients have the right to stop future faxes and to explain  
 13 how they can exercise that right (hereinafter collectively the "Opt-Out Notice  
 14 Requirements").<sup>3</sup>

### 15 16 **Defendants' Illegal Junk Fax Program**

17  
 18 13. Plaintiff is informed and believes, and upon such information and belief  
 19 alleges, that Exhibit 1 and the fax advertisements that are the subject of this  
 20 Complaint were designed as, intended as, and constituted advertisements under the  
 21 JFPA within their four corners and as part of Defendants' overall marketing  
 22 activities promoting their property, goods and services. For example, with respect  
 23 to Exhibit 1, Plaintiff is informed and believes, and upon such information and

24  
 25 <sup>2</sup> Federal Communications Commission, Report and Order on  
 Reconsideration of Rules and Regulations Implementing the TCPA of 1991, 29  
 Comm. Reg. 830 ¶ 186 (2003).

26  
 27 <sup>3</sup> The Opt-Out Notice Requirements are contained in § 227 (b)(1)(C)(iii),  
 (b)(2)(D) and (b)(E), the FCC's regulations found at 47 C.F.R. § 64.1200(a)(4)(iii)-  
 28 (vi) and the FCC's 2006 order. See Federal Communications Commission, Report  
 and Order and Third Order on Reconsideration, 21 FCC Rcd. 3787 ¶ 26 (2006).

1 belief alleges, that Exhibit 1 is an advertisement within the ambit of the JFPA and  
2 FCC regulations because, *inter alia*, it promotes and advertises the following: (1)  
3 the trademark "Healthways" owned by Healthways Parent; (2) the national  
4 discounted-fee physician network and wellness program operated by Healthways;  
5 (3) the commercial availability and qualities of a product/service known as  
6 "ProMailSource" on a subscription-fee basis for use within and without the  
7 Healthways network and wellness program; (4) the website, promailsource.com (a  
8 service, which itself is an advertisement within the ambit of the JFPA and FCC  
9 regulations) and invites recipients to visit that website; (5) the trademark  
10 "ProMailSource" owned by Medversant; and (6) the "partnership" between  
11 Healthways and Medversant with respect to "ProMailSource."

12  
13 14. Plaintiff is informed and believes, and upon such information and belief  
14 alleges, that each Defendant is directly and/or vicariously liable for the violations of  
15 the JFPA and/or FCC regulations alleged herein because, *inter alia*, it: (i) was a  
16 sender of the fax advertisements that are the subject of this Complaint because these  
17 advertisements were sent on its behalf and/or its property, goods or services were  
18 advertised or promoted in such advertisements; (ii) had involvement in the content,  
19 preparation and/or transmission of the fax advertisements; (iii) received and retained  
20 the benefits from the fax advertisements in the form of revenue and name and  
21 trademark recognition and promotion; and (iv) had actual notice of the unlawful  
22 activity constituting the violations alleged herein and failed to take steps to prevent  
23 the same.

24  
25 15. Plaintiff did not give Defendants prior express invitation or permission  
26 as defined in the JFPA (§ (a)(5)) to send to him Exhibit 1 to this Complaint or any  
27 other fax advertisements. Plaintiff is informed and believes, and upon such  
28 information and belief alleges, that Defendants sent or caused Exhibit 1 and other fax



1 advertisements to be sent without obtaining prior express invitation or permission  
2 from other recipients. In sending these faxes, or causing them to be sent,  
3 Defendants also failed to include the disclosures required by the Opt-Out Notice  
4 Requirements, in further violation of the JFPA and FCC regulations. Indeed,  
5 Exhibit 1 has no opt-out notice whatsoever.

### 6 7 **Class Action Allegations**

8  
9 16. **Class Action.** This action is properly maintainable as a class action  
10 because (a) there is an ascertainable class; and (b) there is a well-defined community  
11 of interest in the questions of fact and law involved.

12  
13 17. **Class Definition.** The Plaintiff Class consists of all persons and  
14 entities that were at the time subscribers of telephone numbers to which material  
15 that discusses, describes, or promotes any of Defendants' respective property, goods  
16 or services (whether separately or in combination with the property, goods or  
17 services of any other Defendant) was sent via facsimile transmission, commencing  
18 within four years preceding the filing of this action, including, without limitation,  
19 Exhibit 1 to this Complaint ("Plaintiff Class"). Plaintiff reserves the right to amend  
20 the class definition following completion of class certification discovery.

21  
22 18. **Class Size/Ascertainability.** Plaintiff is informed and believes, and  
23 upon such information and belief alleges, that the number of persons and entities of  
24 the Plaintiff Class is sufficiently numerous such that joinder of all members is  
25 impracticable due to the class's size and due to the relatively small potential  
26 monetary recovery for each Plaintiff Class member, in comparison to the time and  
27 costs associated with joinder in the litigation on an individual basis. Plaintiff is  
28 further informed and believes, and upon such information and belief alleges, that the

1 identity of all class members is readily ascertainable from records and other  
2 documents maintained by Defendants and/or third parties.

3  
4       **19. Community of Interest.** There is a community of interest in the  
5 questions of fact and law involved because there are predominant questions of fact  
6 and law (as more particularly alleged in paragraph 21) and because Plaintiff's claims  
7 are typical of claims held by members of the Plaintiff Class, and Plaintiff and its  
8 counsel can adequately represent the Plaintiff Class (as more particularly alleged in  
9 paragraph 20).

10  
11       **20. Typicality and Adequacy of Representation.** The claims of Plaintiff  
12 are typical of the Plaintiff Class because they were sent fax advertisements by  
13 Defendants, have claims under the same statute and FCC regulations and are entitled  
14 to the same damages and injunctive relief. The Plaintiff Class will be well  
15 represented by Plaintiff and Plaintiff's counsel. Plaintiff appreciates the  
16 responsibilities of a class representative and understands the nature and significance  
17 of the claims made in this case. Plaintiff can fairly and adequately represent and  
18 protect the interests of the Plaintiff Class because there is no conflict between his  
19 interests and the interests of other class members as it regards this action. Proposed  
20 class counsel have the necessary resources, experience (including extensive  
21 experience in litigating claims under the TCPA/JFPA) and ability to prosecute this  
22 case on a class action basis.

23  
24       **21. Common Questions of Law and Fact Are Predominant.** Questions  
25 of law and fact common to the class predominate over questions affecting only  
26 individual class members.

27  
28       **A. Common Questions of Fact.** This case presents numerous

1 questions of fact that are common to all class members claims. Plaintiff is informed  
2 and believes, and upon such information and belief alleges, that the case arises out  
3 of a common nucleus of facts and that Defendants have engaged in the same general  
4 course of conduct vis-à-vis class members, and all class members' damages arise  
5 out of that conduct.

6  
7 **B. Common Questions of Law.** The case presents numerous  
8 common questions of law, including, but not limited to:

9  
10 (1) whether the faxes are advertisements within the ambit of the  
11 JFPA and FCC regulations;

12  
13 (2) who were the senders of the faxes that are the subject of this  
14 Complaint;

15  
16 (3) whether and to what extent Defendants are vicariously liable for  
17 each other's acts or omissions that violate the JFPA and FCC regulations;

18  
19 (4) Defendants' mode and method of obtaining the telephone  
20 numbers to which the faxes that are the subject of this Complaint were sent and  
21 whether that mode and method complied with the requirements of § (b)(1)(C)(ii)  
22 and FCC regulations;

23  
24 (5) whether Defendants complied with the Opt-Out Notice  
25 Requirements of the JFPA and FCC regulations, and the legal consequences of the  
26 failure to comply with those requirements;

27  
28

1           (6)    what constitutes a knowing or willful violation of the JFPA  
2 within the meaning of § (b)(3);

3  
4           (7)    whether Defendants committed knowing and/or willful violations  
5 of the JFPA and/or FCC regulations;

6  
7           (8)    whether damages should be increased on account of Defendants'  
8 knowing and/or willful violations of the Act and/or FCC regulations and, if so, by  
9 what amount; and

10  
11          (9)    whether injunctive relief as prayed for in the Complaint should  
12 be entered.

13  
14          **22. Appropriateness and Manageability of Class Adjudication.** A class  
15 action is an appropriate method for the fair and efficient adjudication of this matter  
16 for several reasons:

17  
18           A.    Prosecuting separate actions by individual class members would  
19 create a risk of inconsistent or varying adjudications that would establish  
20 incompatible standards of conduct for Defendants.

21  
22           B.    Because Defendants have acted on grounds that apply generally  
23 to the Plaintiff Class, injunctive relief is appropriate respecting the class as a whole.

24  
25           C.    Common questions of law and fact, including those identified in  
26 paragraph 21, predominate over questions affecting only individual members.

1 D. Absent class certification there is a possibility of numerous  
2 individual cases and, therefore, class adjudication will conserve judicial resources.

3  
4 E. Most members of the Plaintiff Class are not likely to join or  
5 bring an individual action due to, among other reasons, the small amount to be  
6 recovered relative to the time, effort and expense necessary to join or bring an  
7 individual action. Because the statutory minimum damage is \$500 per violation and  
8 the JFPA does not authorize an award of attorneys' fees to a successful plaintiff,  
9 individual action to remedy Defendants' violations would be uneconomical. As a  
10 practical matter, the claims of the vast majority of the Plaintiff Class are not likely to  
11 be redressed absent class certification.

12  
13 F. Equity dictates that all persons who stand to benefit from the  
14 relief sought herein should be subject to the lawsuit and, hence, subject to an order  
15 spreading the costs of litigation among the class members in relationship to the  
16 benefits received.

17  
18 G. Class adjudication will serve to educate class members about  
19 their rights under the Act and FCC regulations to stop unwanted junk faxes, a  
20 particularly important public purpose given Defendants' failure to disclose to  
21 recipients their right to stop future fax advertisements and how to exercise that right,  
22 in violation of the JFPA and FCC regulations.

23  
24 H. This case is manageable as a class action because, among other  
25 things:

26  
27 (i) Defendants and/or third parties maintain records that will  
28 enable Plaintiff to readily ascertain class members and the number of facsimile



1 transmissions at issue and establish liability and damages.

2  
3 (ii) liability and damages can be established for Plaintiff and  
4 the Plaintiff Class with the same common proofs.

5  
6 (iii) statutory damages are provided for in the Act and are the  
7 same for all members of the Plaintiff Class and can be calculated with mathematical  
8 certainty.

9  
10 (iv) a class action will result in an orderly and expeditious  
11 administration of claims, and it will foster economies of time, effort and expense.

12  
13 (v) a class action will contribute to uniformity of decisions  
14 concerning Defendants' faxing policies and practices.

15  
16 (vi) as a practical matter, the claims of the Plaintiff Class are  
17 likely to go unredressed absent class certification.

18  
19 **Cause of Action for Violations of the JFPA and FCC Regulations**  
20 **(Against All Defendants)**

21  
22 23. **Incorporation.** Plaintiff and the Plaintiff Class reassert and reallege  
23 the allegations set forth in paragraphs 1 through 22, above.

24  
25 24. **Defendants' Violations of the Act and FCC Regulations.**  
26 Commencing within four years preceding the filing of this action, including, without  
27 limitation, on August 13, 2014, Defendants violated the JFPA and FCC regulations  
28 by, among other things, sending unsolicited advertisements and/or advertisements

1 that violate the Opt-Out Notice Requirements from telephone facsimile machines,  
2 computers, or other devices to telephone facsimile machines of Plaintiff and  
3 members of the Plaintiff Class, within the United States.  
4

5       **25. Private Right of Action.** Under § (b)(3), Plaintiff has a private right of  
6 action to bring this claim for damages and injunctive relief on behalf of himself and  
7 on behalf of the Plaintiff Class to redress Defendants' violations of the Act and FCC  
8 regulations.  
9

10       **26. Injunctive Relief.** Plaintiff is entitled have preliminary and permanent  
11 injunctions issue to: (1) prohibit Defendants, their respective employees, agents,  
12 representatives, contractors, affiliates and all persons and entities acting in concert  
13 with them, from committing further violations of the Act and FCC regulations,  
14 including, without limitation, the transmission of any unsolicited advertisements, or  
15 of any advertisements that do not comply with the Opt-Out Notice Requirements;  
16 (2) require Defendants to deliver to Plaintiff all records of fax advertisements sent  
17 commencing within four years of the filing of this action, including all content sent  
18 via facsimile, fax lists, and transmission records; (3) require Defendants to adopt  
19 ongoing educational, training and monitoring programs to ensure compliance with  
20 the JFPA and FCC regulations, and limiting facsimile advertising activity to  
21 personnel who have undergone such training; (4) require Defendants to provide  
22 written notice to all persons to whom Defendants sent, via facsimile transmission,  
23 advertisements in violation the Act and/or FCC regulations, warning such persons  
24 that the faxing of unsolicited advertisements or advertisements that do not comply  
25 with the Opt-Out Notice Requirements violates the JFPA and that they should not be  
26 led or encouraged in any way by Defendant's violations of the Act and/or FCC  
27 regulations to send advertisements of their own that violate the Act and/or FCC  
28 regulations; and (5) require Defendants to conspicuously place on the homepage of

1 their websites the warnings contained in subsection 4 of this paragraph.  
2

3       27. **Damages.** Plaintiff and members of the Plaintiff Class are entitled to  
4 recover statutory damages in the minimum amount of \$500 for each violation by  
5 Defendants of the JFPA and/or FCC regulations, as expressly authorized by §  
6 (b)(3)(B). In addition, Plaintiff is informed and believes, and upon such information  
7 and belief alleges, that Defendants committed their violations willfully and/or  
8 knowingly and that the amount of statutory damages should be increased up to three  
9 times, also authorized by § (b)(3)(B).  
10

### 11 **Prayer for Relief**

12

13       WHEREFORE, Plaintiff and the Plaintiff Class pray for judgment against  
14 Defendants, and each of them:  
15

- 16       1. Certifying a class described in paragraph 17 of the Complaint;  
17
- 18       2. Appointing Plaintiff as representative for the Plaintiff Class and  
19 awarding Plaintiff an incentive award for his efforts as class representative;  
20
- 21       3. Appointing Plaintiff's counsel as counsel for the Plaintiff Class;  
22
- 23       4. Awarding of statutory damages in the amount of \$500 for each  
24 violation of the Act and/or FCC regulations and the trebling of such statutory  
25 damages, in an amount not less than \$5,000,000, exclusive of interest and costs,  
26 according to proof;  
27  
28

5. Entering preliminary and permanent injunctions requested in paragraph 26 of the Complaint;

6. Ordering payment of Plaintiff's costs of litigation, including, without limitation, costs of suit and attorneys' fees, spread among the members of the Plaintiff Class in relation to the benefits received by the Plaintiff Class;

7. For pre-judgment interest;

8. For such other and further relief as the Court shall deem just and proper.

## Jury Demand

Plaintiff demands trial by jury on all issues triable by jury.

DATED: September 15, 2014      LAW OFFICES OF SCOTT Z. ZIMMERMANN  
and  
PAYNE & FEARS LLP

By: SCOTT Z. ZIMMERMANN  
Attorneys for Plaintiff Edward Simon, DC, and for  
all others similarly situated

# Exhibit 1



**PROMAILSOURCE™**  
HIPAA COMPLIANT SECURE EMAIL

August 13, 2014

RE: Healthways HIPAA Compliance Announcement

Healthways is excited to announce our partnership with a HIPAA compliant email solution. *ProMailSource™* is an email service, but unlike common email services, it is *secure* (cannot be hacked and protects the privacy of our mutual offices and patients). *ProMailSource™* complies with HIPAA Privacy Rules (now being diligently enforced) that apply to all practitioners who treat patients.

This solution allows you to communicate PHI (Protected Health Information) via email. You will be able to communicate with Healthways, your patients, health plans, attorneys, and anyone you currently share PHI with.

How will *ProMailSource™* benefit you?

- You can use *ProMailSource™* to communicate securely with all your patients and other healthcare organizations. Your patients will appreciate your concern for their privacy.
- Reduce risk of fines for HIPAA violations of up to \$1,500,000.

Healthways will be utilizing *ProMailSource™* to communicate with our practitioners for Educational Materials, Claims Management Questions, Changes to network policies, Practitioner credentialing updates, Practitioner enrollment questions and more.

Healthways will continue to offer all of our existing communication options. We do find a HIPAA compliant email solution to be the most effective method to share and trade information with our practitioners.

How to subscribe to *ProMailSource™*

To subscribe, visit <https://promailsources.com/healthways> or call 1-855-252-4314.

As *ProMailSource™* is a solution that is applicable beyond Healthways there is a cost to subscribe. *ProMailSource™* is only \$12.95 per month or an annual subscription of only \$120 per year per mailbox.

As a valued Healthways partner, *ProMailSource™* has agreed to waive its \$100 implementation fee if you subscribe prior to September 5, 2014.

Sincerely,

A handwritten signature in black ink, appearing to read 'Martie Stabelfeldt'.

Martie Stabelfeldt  
Healthways WholeHealth Networks, Inc.  
Vice President, Physical Medicine Operations

**EXHIBIT “B”**

[COUNSEL LISTED ON SIGNATURE PAGE]

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

EDWARD SIMON, DC, individually  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

HEALTHWAYS, INC., a Delaware  
corporation; HEALTHWAYS  
WHOLEHEALTH NETWORKS, INC.,  
a Delaware corporation;  
MEDVERSANT TECHNOLOGIES,  
L.L.C., a California limited liability  
company; and DOES 1 through 1,000,  
inclusive,

Defendants

Case No. 2:14-CV-08022-BRO-JC

**Honorable Beverly Reid O'Connell**

**CLASS ACTION**

**Parties' Initial Rule 26(f) Report**

**[Fed. R. Civ. P. 26(f)]**

Scheduling Conf.: February 2, 2015

Time: 1:30 p.m.

Courtroom: 14 – Spring Street

Plaintiff Edward Simon, DC ("Plaintiff"), Defendants Healthways, Inc.  
("HWAYS") and Healthways WholeHealth Networks, Inc. ("HWHN") (collectively  
"Healthways"), and Defendant Medversant Technologies, L.L.C. ("Medversant")  
(Medversant and Healthways are collectively, "Defendants") submit this Initial Rule  
26(f) Report.

1  
2           **1. Statement of the Case**

3  
4           **Plaintiff's Statement:** This is a putative class action alleging that  
5 Defendants violated the Telephone Consumer Protection Act, as amended by the  
6 Junk Fax Prevention Act of 2005, 47 U.S.C. § 227, and regulations promulgated  
7 thereunder by the Federal Communications Commission ("FCC") (collectively  
8 "TCPA"), by sending, via facsimile transmission, unsolicited advertisements and  
9 advertisements that did not comply with the TCPA's opt-out notice requirements.  
10 The class period commenced on September 16, 2010 (four years prior to the filing  
11 of the action, consistent with the applicable statute of limitations contained in 28  
12 U.S.C. § 1658).

13           HWHN and Medversant have acknowledged in connection with Rule 26(f)  
14 conferences successfully transmitting via facsimile approximately 5,000 and  
15 36,000 transmissions, respectively, of the type received by Plaintiff on August 13,  
16 2014, regarding, among other things, "ProMailSource" (discussed in more detail in  
17 Plaintiff's Statement on Legal Issues). Plaintiff alleges that the ProMailSource fax  
18 he received violated the TCPA because (1) it was unsolicited, including that he did  
19 not give any "prior express permission" via his HWHN "Participating Practitioner  
20 Agreement;" and (2) the fax failed to contain any opt-out notice.

21  
22           **Healthways' Statement:** HWHN is a wholly owned subsidiary of HWAYS.  
23 HWAYS is a health and well-being improvement company. HWHN is a  
24 subsidiary of HWAYS that offers physical medicine benefit management to health  
25 plans and employer groups.

26           In order to join HWHN's network of practitioners, a medical care provider  
27  
28



1 has to fill out and submit to HWHN an application referred to as "Participating  
2 Practitioner Agreement" and upon HWHN's approval of the Participating  
3 Practitioner Agreement, the applicant becomes a member of HWHN's network of  
4 practitioners. The Participating Practitioner Agreement requests contact  
5 information, including fax number. Plaintiff completed and signed a Participating  
6 Practitioner Agreement and was a member of HWHN's network at the time the  
7 relevant faxes were sent.

8 Sometime before June 2014, Medversant contacted HWHN to inform it of a  
9 product/service known as "ProMailSource", which is a HIPAA compliant e-mail  
10 communication program. Medversant informed HWHN that the product could be  
11 beneficial to the providers in its network. Medversant drafted the initial version of  
12 the ProMailSource fax that was eventually sent to Plaintiff. In or around June  
13 2014, HWHN starting sending out the ProMailSource faxes. Thereafter, on July  
14 22, August 13 and August 20, 2014, Medversant transmitted faxes to HWHN's  
15 network. Plaintiff alleges that he received one of Medversant's faxes on August  
16 13, 2014.

17 Healthways deny all material allegations in the complaint and deny that they  
18 violated the TCPA. Healthways also deny that Plaintiff or the putative class is  
19 entitled to any of the relief requested.

20  
21 **Medversant' Statement:** Medversant provides credentialing services and  
22 offers communication compliance services to help its customers, like Healthways,  
23 and the healthcare providers working within such networks, meet their information  
24 security obligations.

25 In or around June 2014, Healthways began sending announcements to its  
26 providers via fax that it would be using ProMailSource, Medversant's new  
27



1 communication compliance service, and making it available to its providers to use  
2 in their own practices. In July, Healthways asked Medversant to transmit such  
3 announcements via facsimile to some of its providers. Therefore, on July 22,  
4 August 13 and August 20, 2014, Medversant transmitted faxes to providers in the  
5 Healthways network, the content of which Medversant was not allowed to alter  
6 without permission of Healthways, informing the providers of the new service that  
7 Healthways would be using and its availability for use in the providers' practices.

8 Plaintiff, a chiropractor and a provider in the Healthways network who  
9 alleges that he received a fax on August 13, 2014, filed this class action. He  
10 alleges the fax was an unsolicited advertisement that violated the TCPA because  
11 Defendants did not provide information that would allow him to opt out of certain  
12 kinds of faxes.

13 Medversant denies all material allegations in the complaint, that it has  
14 violated the TCPA, that Plaintiff or the putative class is entitled to any of the  
15 requested relief, and that Plaintiff has been damaged in any sum or sustained any  
16 injury or loss by reason of any act or omission of Medversant. Medversant has  
17 petitioned the Federal Communications Commission for retroactive waiver of the  
18 opt-out requirements of 47 C.F.R. § 64.1200(a)(4)(iv). *In the Matter of Rules &*  
19 *Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 61  
20 Communications Reg. (P&F) 671 (F.C.C. Oct. 30, 2014).

21 Please see Medversant's Statements under "Legal Issues" and "Motions" for  
22 further information on Medversant's position in the action.  
23  
24  
25  
26  
27

1           **2. Subject Matter Jurisdiction**

2  
3           **Plaintiff's Statement:** Plaintiff filed this action on September 16, 2014, in  
4 Los Angeles County Superior Court. Healthways, joined by Medversant, removed  
5 the action to this Court on October 16, 2014. This Court has subject matter  
6 jurisdiction of this case pursuant to 28 U.S.C. § 1331 (federal question  
7 jurisdiction). *See Mims v. Arrow Fin. Svcs., LLC*, 132 S. Ct. 740, 742 (2012).

8           *Spokeo, Inc. v. Robins*, referenced by Defendants below, is not a TCPA case.  
9 It is a FCRA case in which the plaintiff could not show any actual harm; here,  
10 Plaintiff suffered identifiable concrete harm when he was sent the August 13 fax,  
11 including wasted paper and toner and interference with his telephone line. In any  
12 event, the whole notion that *Spokeo* might affect this case is pure speculation.

13  
14           **Healthways' Statement:** Healthways incorporates Medversant's position set  
15 forth below.

16  
17           **Medversant's Statement:** A third party petition for a writ of certiorari  
18 currently pending before the United States Supreme Court may have bearing on the  
19 question of whether Plaintiff has standing, and therefore whether the Court has  
20 subject matter jurisdiction, in this matter. Plaintiff does not allege any injury in  
21 fact. Pending before the Supreme Court of the United States is the Petition for a  
22 Writ of Certiorari of *Spokeo, Inc.*, on the question of whether Congress may confer  
23 Article III standing upon a plaintiff who suffers no concrete harm, and who  
24 therefore could not otherwise invoke the jurisdiction of a federal court, by  
25 authorizing a private right of action based on a bare violation of a federal statute.  
26 *See Spokeo, Inc. v Robins* (Petition for Writ of Certiorari filed May 1, 2014). On  
27

1 October 6, 2014 the Supreme Court asked the United States Solicitor General to  
 2 weigh in on Spokeo's petition. That petition specifically references the TCPA as  
 3 one of the statutes that would be impacted if the Court grants the petition and finds  
 4 that there is no subject matter jurisdiction. Medversant therefore reserves the right  
 5 to argue that the Court does not have subject matter jurisdiction, pending resolution  
 6 of the Spokeo petition (and, if the Court grants certiorari, of the Spokeo matter).

### 7 8 **3. Legal Issues**

#### 9 10 **Plaintiff's Statement:**

11 Below are the major legal issues from Plaintiff's perspective:

12 **Advertisement Issue:** On August 13, 2014, Plaintiff received a fax, a copy  
 13 of which is attached as Exhibit 1 to the Complaint. Among other things, the  
 14 August 13 fax promotes the commercial qualities and availability of an email  
 15 service "ProMailSource" (e.g., "it is secure (cannot be hacked and protects the  
 16 privacy of our mutual offices and patients)") and seeks to have recipients subscribe  
 17 to "ProMailSource" for "only" \$12.95 per month or for "only" \$120 per year. The  
 18 fax announces a "partnership" between HWHN and the distributor of  
 19 "ProMailSource" (Medversant) and promotes HWHN's physician network and  
 20 wellness program. The fax is signed by a HWHN Vice President. Plaintiff  
 21 contends that the August 13 fax is an advertisement within the scope of the TCPA.  
 22 Defendants dispute this contention.

23 **Statutory Defenses:** HWHN claims that Plaintiff provided it with his  
 24 facsimile number via Plaintiff's "Participating Practitioner Agreement" with  
 25 HWHN. But this does not provide HWHN with a defense. There are only two  
 26 defenses under the TCPA: (1) "prior express invitation or permission" ("PEP" for  
 27



1 short) and (2) “existing business relationship” (“EBR” for short). § 227(a)(5),  
2 (b)(1)(C)(i)-(iii).

3 The mere act of providing a fax number to another does not constitute PEP  
4 under the JFPA. In order to obtain PEP “the recipient must be expressly told that  
5 the materials to be sent are advertising materials, and will be sent by fax.” *Jemiola*  
6 *v. XYZ Corp.*, 802 N.E.2d 745, 748 (Ohio C.P. 2003). The FCC stresses that PEP  
7 “requires that the consumer understand that by providing a fax number, he or she is  
8 agreeing to receive faxed advertisements.” In the Matter of Rules and Regulations  
9 Implementing the Telephone Consumer Protection Act of 1991, 18 F.C.C.R.  
10 14014, 14129, ¶ 193 (“FCC 2003 Order”). Similarly, the FCC has ruled that  
11 requesting a fax number on an application form provides PEP only if it “include[s]  
12 a clear statement indicating that, by providing such fax number, the individual  
13 agrees to receive facsimile advertisements from that company of organization.” In  
14 the Matter of Rules and Regulations Implementing the Telephone Consumer  
15 Protection Act of 1991, 21 F.C.C.R. 3781, 3807, ¶ 45 (“FCC 2006 Order”).

16 Moreover, the burden on a fax sender to prove PEP is extremely high:  
17 “Senders that claim their facsimile advertisements are delivered based on the  
18 recipient’s prior express permission must be prepared to provide *clear and*  
19 *convincing evidence* of the existence of such permission.” FCC 2006 Order ¶ 36,  
20 emphasis added; *see also* FCC 2003 Order ¶ 46.

21 Accordingly, Simon contends that HWHN will not be able to establish that  
22 Simon gave PEP to it. Nor can the other defendants assert a PEP defense because  
23 they (1) claim no contact with Simon, and (2) cannot “piggyback” on any PEP  
24 given to HWHN. *See Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 955 (9th  
25 Cir. 2009) (defendant cannot take advantage of express consent extended to  
26 unaffiliated party) and FCC 2006 Order at ¶ 45.

1 HWHN cannot assert an EBR defense either. The existence of an  
2 “established business relationship” alone is not a defense under the TCPA. A  
3 defendant’s fax must contain a “clear and conspicuous” opt-out notice setting forth  
4 a number of mandatory disclosures. § 227(b)(2)(C)(iii), (b)(2)(D) and (b)(E), and  
5 the FCC’s regulations found at 47 C.F.R. § 64.1200(a)(iii). The October 30, 2014,  
6 FCC order relied upon by Defendants in connection with their contemplated  
7 motion to stay (see Medversant’s discussion of Motions *infra*) reaffirmed the opt-  
8 out notice requirements for EBR-based faxes and is not the subject of Defendants’  
9 FCC petitions on which their motion to stay is based.

10 There is no opt-out notice whatsoever contained on the August 13 fax (and  
11 based on discussions with defense counsel, there are no opt-out notices on any of  
12 the ProMailSource faxes). Accordingly, regardless of whether Plaintiff had a  
13 business relationship with HWHN, it cannot assert an EBR defense.

14 Because there are no opt-out notices on any of the faxes at issue, neither of  
15 the other defendants can assert an EBR. Separately, these defendants did not have  
16 a business relationship with Plaintiff and cannot “piggyback” on any EBR between  
17 Plaintiff and HWHN. An EBR is not “fungible” according to the FCC: “the EBR  
18 exemption applies only to the entity with which the business or residential  
19 subscriber has had a ‘voluntary two-way communication.’ It would not extend to  
20 affiliates of that entity.” FCC 2006 Order ¶ 20.

21 ***Plaintiff’s Standing:*** Defendants deny that Plaintiff has standing. The  
22 TCPA confers standing to private persons to sue for violations. § 227(b)(3). Just  
23 recently, the Eleventh Circuit re-confirmed that standing for Article III purposes is  
24 conferred to a TCPA plaintiff simply by being sent a fax; nothing else is  
25 required. *Palm Beach Golf Ctr.-Boca, Inc v. Sarris*, 771 F.3d 1274 (11th Cir.  
26 2014); *see also, Holtzman v. Turza*, 728 F.3d 682 (7th Cir. 2013); *Chapman v.*

1 *Wagener Equities, Inc.*, 747 F.3d 489 (7th Cir. 2014). There is no issue that Simon  
 2 was sent the August 13 fax and he therefore has standing.

3 ***Class Certification:*** The Seventh Circuit recently observed that “[c]lass  
 4 certification is normal in litigation under §227, because the main questions, such as  
 5 whether a given fax is an advertisement, are common to all recipients.” *Ira*  
 6 *Holtzman, C.P.A., Ltd. v. Turza*, 728 F.3d at 684; *see also CE Design Ltd. v. King*  
 7 *Architectural Metals, Inc.*, 271 F.R.D. 595, 600 (N.D. Ill. 2010) vacated and  
 8 remanded on other grounds, 637 F.3d 721 (7th Cir. 2011) (class certification  
 9 granted, observing that “the weight of authority, particularly in this District  
 10 [Northern District of Illinois],” supports certification of junk fax class actions).  
 11 Indeed, within the last six years, courts in the Northern District of Illinois alone  
 12 have certified classes in no fewer than nineteen contested junk fax cases. A legion  
 13 of courts, including within the Central District—too numerous to cite—agree. *See,*  
 14 *e.g., Vandervort v. Balboa Cap. Corp.*, 287 F.R.D. 554, 563 (C.D. Cal. 2012)  
 15 (Staton Tucker, J.); *Critchfield Phys. Therapy v. Taranto Group, Inc.*, 263 P.3d  
 16 767, 778-79 (Kan. 2011); *Reliable Money Order, Inc. v. McKnight Sales Co.*, 281  
 17 F.R.D. 327, 339 (E.D. Wis. 2012), *aff’d*, 704 F.3d 489 (7th Cir. 2013); *Kavu, Inc.*  
 18 *v. Omnipak Corp.*, 246 F.R.D. 642, 650 (W.D. Wash. 2007); *Karen S. Little, L.L.C.*  
 19 *v. Drury Inns, Inc.*, 306 S.W.3d 577, 584 (Mo. Ct. App. 2010).

20 Plaintiff contends that the case is well suited for class treatment because the  
 21 factual and legal issues are common to all putative class members and  
 22 predominate, and resolving the claims of the putative class via a class action is far  
 23 superior to individual actions.

24  
 25 **Healthways’ Statement:** Healthways dispute Plaintiff’s contentions.  
 26 Healthways contend that the faxes do not constitute advertisement. Even if the  
 27  
 28



1 faxes are held to constitute advertisement, Plaintiff and the putative class had an  
2 established business relationship with HWHN and gave HWHN prior express  
3 invitation or permission to send the faxes. Moreover, Plaintiff's proposed class  
4 action formation is improper for several reasons, including: a) the issue of whether  
5 Plaintiff (or the putative class members, respectively) consented to HWHN's  
6 alleged communication precludes certification; b) whether each member of the  
7 class received the fax; and c) whether each recipient of the fax owned the fax  
8 machine and therefore has standing to sue.

9 The key legal issues include, but are not limited to: (1) whether Plaintiff has  
10 standing to bring this lawsuit under the TCPA; (2) whether this case should be  
11 stayed pending the petitions for a waiver to the FCC; (3) whether the faxes were  
12 unsolicited advertisements under the TCPA; (4) whether Plaintiff and/or members  
13 of the putative class gave Medversant and/or Healthways express invitation or  
14 permission to send faxes; (5) whether Plaintiff and/or members of the putative  
15 class had an established business relationship with Medversant and/or Healthways;  
16 (6) if there was a violation of the TCPA, which Healthways denies, whether that  
17 violation was willful or knowing; (7) whether Plaintiff has stated a class capable of  
18 certification; (8) whether Plaintiff will fairly and adequately protect the interests of  
19 the putative class; (9) whether the facts alleged support class certification; (10)  
20 whether Plaintiff fails to show the existence of a class; (11) whether a class action  
21 is the appropriate method for fair and efficient adjudication of this matter; (12)  
22 whether the faxes constitute advertisement; and (13) did HWAYS violate the  
23 TCPA despite not sending any faxes.

24  
25 **Medversant's Statement:** Medversant disputes Plaintiff's positions.  
26 Medversant contends that the faxes at issue did not violate the TCPA because they  
27  
28

1 did not require an opt out notice since: they were not advertisements but rather  
2 informational announcements by Healthways; Plaintiff had an existing business  
3 relationship with Healthways and many members of the putative class had an  
4 existing business relationship with one or both Defendants; and Plaintiff and the  
5 putative class gave prior express invitation or permission to Healthways and/or  
6 Medversant to receive faxes. Medversant also maintains that, assuming *arguendo*  
7 that it violated the TCPA (and Medversant denies any such violation), such  
8 violation was not willful or knowing. The case *Jemiola v. XYZ Corp.*, 802 N.E.2d  
9 745, 748 (Ohio C.P. 2003), cited by Plaintiff regarding PEP, has no precedential  
10 value in the Central District of California.

11 Medversant further disputes that a class action is the appropriate vehicle for  
12 adjudication of this dispute because, among other things, there are unique factual  
13 issues to be addressed with respect to each individual member of the putative class,  
14 including without limitation (1) which version of the fax was transmitted to each  
15 member of the putative class, (2) whether each member of the putative class  
16 received a fax, and (3) whether each member of the putative class gave prior  
17 express permission or invitation for either or both of the Defendants to transmit the  
18 faxes and/or had an existing business relationship with either or both of the  
19 Defendants.

20 The key legal issues include, *inter alia*: (1) whether Plaintiff has standing to  
21 bring this lawsuit under the TCPA; (2) whether this case should be stayed pending  
22 the FCC's resolution of issues relating to whether an opt out notice was required  
23 on the faxes at issue in this case since Plaintiff and member of the putative class  
24 gave prior express permission or invitation to Healthways and/or Medversant to  
25 transmit the faxes; (3) whether Medversant had a high degree of involvement in the  
26 creation and/or sending of the faxes at issue; (4) whether Medversant can or should  
27

1 be held liable for faxes that it transmitted at the direction of Healthways; (5)  
2 whether the faxes at issue were unsolicited advertisements under the TCPA; (6)  
3 whether Plaintiff and/or members of the putative class gave Medversant and/or  
4 Healthways express invitation or permission to send him faxes; (7) whether  
5 Plaintiff and/or members of the putative class had an established business  
6 relationship with Medversant and/or Healthways; (8) if there was a violation of the  
7 TCPA, which is denied, whether that violation was willful or knowing; (9) whether  
8 Plaintiff has stated a class of litigants capable of certification for a class under the  
9 Federal Rules of Civil Procedure or under California law; (10) whether Plaintiff  
10 will fairly and adequately protect the interests of the putative class; (11) whether  
11 the facts alleged support class certification; (12) whether Plaintiff fails to show the  
12 existence of a class; (13) whether a class action is the appropriate method for fair  
13 and efficient adjudication of this matter; (14) whether Medversant violated any of  
14 Plaintiff's or the putative classes' privacy rights; and (15) whether Plaintiff is  
15 entitled to injunctive relief.

16  
17 **4. Parties, Evidence, Etc.**

18  
19 **Plaintiff's Statement:** Plaintiff is an individual. He is a doctor of  
20 chiropractic medicine practicing in North Hollywood. He will testify regarding (1)  
21 the facts and circumstances surrounding his receipt of the August 13 fax and any  
22 other fax advertisements sent or caused to be sent by Defendants which are the  
23 subject of this action (the "Faxes"); (2) his subscription, during all relevant times,  
24 of the facsimile telephone number (818) 761-8705 to which the August 13 fax was  
25 sent; (3) whether an established business relationship existed between Plaintiff and  
26 Defendants at the time the Faxes were sent to Plaintiff; (4) the absence of any prior  
27

1 express permission given by Plaintiff to be sent the Faxes; and (5) the adequacy of  
2 Plaintiff to act as class representative for the putative class in this case.

3 The "core" set of documents to be produced by Defendants in this case  
4 consists of: (1) fax advertisements sent by Defendants; (2) fax lists used for the fax  
5 broadcasts; and (3) reports and other documents recording the transmission of the  
6 fax advertisements. Based on discussions at the Rule 26(f) conference, Plaintiff  
7 understands that Defendants have these documents.

8  
9 **Healthways' Statement:** HWAYS is a health and well-being improvement  
10 company. HWHN is a subsidiary of HWAYS that offers physical medicine  
11 benefit management to health plans and employer groups.

12 Healthways identifies the following parties: Plaintiff, Medversant and  
13 Healthways.

14 Healthways identifies the following Witnesses: Plaintiff; Megan Walker  
15 (Senior Manager of Physical Medicine Operation for Healthways WholeHealth  
16 Networks, Inc.); Denise Ferrari (Director of Provider Network Services & Claims  
17 for Healthways WholeHealth Networks, Inc.); Pamela DeWeese (Manager,  
18 Compliance for Healthways WholeHealth Networks, Inc.); Dayna Carney  
19 (Business Analyst for Healthways WholeHealth Networks, Inc.); Winnie Grim  
20 (Analyst, Service Operations for Healthways WholeHealth Networks, Inc.); Lori  
21 Davis (Account Management Consultant for Healthways WholeHealth Networks,  
22 Inc.); Desiree Wood (Coordinator, Operations for Healthways WholeHealth  
23 Networks, Inc.); Martie Stabelfeldt, (Vice President Physical Medicine Operations  
24 for Healthways WholeHealth Networks, Inc.); Kathleen Policarpio (IT Operations  
25 Analyst for Medversant Technologies, LLC.); Joe Beckerman (Vice President of  
26 National Accounts for Medversant Technologies, LLC.); Noor Alikan (Vice  
27  
28

1 President of Technology Operations for Medversant Technologies, LLC.) ; Matt  
2 Haddad (Chief Executive Officer at Medversant); other employees of Healthways  
3 and Medversant; putative class members.

4 Healthways identify the following documents:

5 Agreement between Healthways WholeHealth Networks, Inc., and  
6 Medversant Technologies, LLC; ProMailSource faxes; Drafts of the  
7 ProMailSource faxes; Communications between Healthways WholeHealth  
8 Networks, Inc., and Medversant Technologies, LLC. relating to the ProMailSource  
9 faxes; Documents related to the transmission of the ProMailSource faxes;  
10 Documents reflecting prior relationship and/or permission from members of  
11 Healthways WholeHealth Networks, Inc.'s network of practitioners to receive  
12 faxes from the Healthways Defendants; Copies of documents and other tangible  
13 items produced by Plaintiff to the extent relevant to Defendant's defenses; Copies  
14 of documents and other tangible items produced by Medversant Technologies,  
15 LLC to the extent relevant to Defendant's defenses.

16  
17 **Medversant's Statement:**

18 Medversant provides credentialing services to healthcare organizations such  
19 as Healthways. The credentialing process involves gathering, verifying and  
20 updating information from healthcare providers within the Healthways network. In  
21 addition, Medversant offers communication compliance solutions to help its  
22 customers, like Healthways, and the healthcare providers working within such  
23 networks, meet their information security obligations under the Health Information  
24 Portability and Accountability Act ("HIPAA"). As part of its credentialing  
25 business, Medversant communicates with, follows up on requests from, and  
26 exchanges valuable information directly with customers (healthcare organizations  
27



1 customers and the healthcare providers in their networks), including by fax.  
2 Medversant is not in the advertising business.

3 Medversant identifies the following parties: Plaintiff; Healthways; and  
4 Medversant.

5 Medversant identifies the following percipient witnesses: Plaintiff; Noor  
6 Alikhan (Vice President of Technology Operations at Medversant); Joe Beckerman  
7 (Vice President of National Accounts at Medversant); Matt Haddad (Chief  
8 Executive Officer at Medversant); Kathleen Policarpio (IT Operations Analyst at  
9 Medversant); Martie Stabelfeldt (Vice President of Physical Operations at  
10 Healthways); Megan Walker (Senior Manager of Physical Medicine Operations at  
11 Healthways); Denise Ferrari (Director of Provider Network Services & Claims at  
12 Healthways); Kelley Moore (Senior buyer of Supplier Contracts Group at  
13 Healthways); other employees of Healthways and Medversant; putative class  
14 members.

15 Medversant identifies the following categories of documents: Faxes  
16 transmitted from Medversant and/or Healthways to health care providers regarding  
17 ProMailSource; drafts of faxes from Medversant and/or Healthways to health care  
18 providers regarding ProMailSource; documents regarding the relationship between  
19 Medversant and Healthways, including, but not limited to, contracts; documents  
20 regarding the implementation of ProMailSource, including, but not limited to, test  
21 plans, launch schedules, and statements of work; documents reflecting prior  
22 relationships and/or permission from health care providers to receive faxes from  
23 Medversant or Healthways; documents reflecting existing business relationships  
24 with health care providers and/or relating to Medversant's credentialing services;  
25 and communications between Medversant and Healthways regarding faxes and/or  
26 ProMailSource.



**Plaintiff's Position:** The TCPA provides for minimum statutory damages of per fax transmission (without showing any actual damages) that the Court in its discretion, increase no more than threefold if a defendant's violations are either knowing or willful. § 227(b)(3). The threshold to qualify for trebling is In last year's *Bridgeview* decision, the court adopted what it called a "more on interpretation" of the willfully or knowingly threshold under the Act, ag that it "simply requires that the Act be intentional or volitional, as opposed dvertent, and not that defendant must have known that the conduct would e the statute." *Bridgeview Health Care Ctr. Ltd. v. Clark*, No. 09 C 5601, WL 1154206, at \*7 (N.D. Ill. Mar. 19, 2013). Indeed, "'a plaintiff does not o prove that defendant had knowledge of the TCPA's provisions...'" *Id.*

**Healthways' Position:** Not applicable to Healthways as defendants.

**Medversant's Position:** Not applicable to Medversant as a defendant. To the extent it is applicable, Medversant asserts that neither Plaintiff nor any putative member has suffered damages and that Medversant is not liable for any damages. Using a single sheet of paper and black toner to print a fax (assuming a fax is even printed given that many fax lines use electronic delivery) is not a net benefit or cause of harm. Further, while the TCPA provides for minimum statutory damages

1 of \$500 per fax transmission (which Medversant asserts is unconscionable),  
2 Plaintiff's calculated number of \$20.5 million relies on a faulty assumption that the  
3 41,000 fax transmissions (which differ amongst each other) comprise a single  
4 class.

5  
6 **6. Insurance**

7  
8 **Plaintiff's Position:** This is inapplicable to Plaintiff.

9  
10 **Healthways' Position:** Healthways has an E&O policy with ACE USA  
11 (Illinois Union Insurance Company). The policy has a \$15 million limit (including  
12 defense expenses.)

13  
14 **Medversant's Position:** Medversant has an insurance policy with Travelers  
15 Insurance, under which Travelers Insurance may be liable to satisfy all or part of a  
16 possible judgment in this action. The limits of coverage are \$3 million per  
17 wrongful act with a \$3 million aggregate limit. The policy limits are reduced by  
18 any fees, costs or settlement. The carrier has issued a reservation of rights.

19  
20 **7. Motions**

21  
22 **Plaintiff's Position:** Based on the information provided by Defendants at  
23 the Rule 26(f) conference, Plaintiff does not anticipate filing a motion to add other  
24 parties. Plaintiff anticipates that after conducting class-related discovery, Plaintiff  
25 will file an amended complaint to reflect such discovery and to conform the  
26 pleading to Rule 23 requirements (as Plaintiff's current complaint is a California  
27

1 state court based pleading). Plaintiff anticipates filing a motion for class  
2 certification, and as appropriate, a motion for partial/complete summary judgment.  
3 Plaintiff anticipates the need to file discovery motions, although Plaintiff is hopeful  
4 that discovery disputes can be resolved. Plaintiff will file Motions in Limine, as  
5 necessary.

6 Plaintiff will oppose any motion by Defendants to stay the action. As  
7 Plaintiff understands it, Defendants will seek to stay the case until after the FCC  
8 rules on their petitions to the FCC for retroactive waivers of past violations of the  
9 FCC's regulation requiring opt-out notices for PEP-based fax transmissions.  
10 (Medversant has already filed its petition, and Healthways indicated that it intends  
11 to file a petition shortly.) Defendants' requests for retroactive waivers do not merit  
12 a stay because, among other things, any applications for waiver would not change  
13 discovery in the case—the retroactive waivers would only apply to transmissions  
14 sent to persons who gave PEP, meaning Defendants would need to establish PEP  
15 in the first instance. Plaintiff is entitled to conduct discovery regarding any alleged  
16 PEP, and therefore the scope of discovery would remain unchanged.

17  
18 **Healthways' Position:** Healthways intend to file the following motions: (1)  
19 Motion to Stay; (2) Motion for Summary Judgment; (3) Motions in Limine, if  
20 necessary. The motion to stay will be filed jointly with Medversant for the reasons  
21 identified by Medversant below.

22  
23 **Medversant's Position:** Medversant intends to file the following motions  
24 during the course of the litigation: (1) Motion to Stay; (2) Motion for Summary  
25 Judgment; (3) Motions in Limine, if necessary; and (4) Motions to Compel, if  
26 necessary.



1           On October 30, 2014, the FCC acknowledged in an order that, prior to the  
2           issuance of the order, organizations reasonably may have believed that an opt out  
3           notice was not required for faxes sent to recipients who had provided prior express  
4           invitation or permission for the transmission of faxes, and invited organizations to  
5           apply for retroactive waiver of 47 C.F.R. § 64.1200(a)(4)(iv). *In the Matter of*  
6           *Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 61  
7           Communications Reg. (P&F) 671 (F.C.C. Oct. 30, 2014). Accordingly,  
8           Medversant submitted a petition for retroactive waiver on January 8, 2015.  
9           Because the FCC has yet to grant or deny Medversant's petition for waiver, and  
10          Medversant's defenses, including PEP, are in part dependent upon the granting of  
11          such waiver, it would be prejudicial to Medversant for this case to go forward and  
12          for Medversant to have to defend itself without it knowing whether it has a PEP  
13          defense. *Physicians Healthsource, Inc. v. Endo Pharmaceuticals, et al.*, No. 2:14-  
14          cv-02289 (E.D. Pa. Jan 16, 2015). Further, the scope of discovery and potential  
15          settlement discussions drastically change based on whether the FCC grants or  
16          denies the waiver. There is no prejudice to Plaintiff by a stay and the Court would  
17          benefit from waiting for the FCC to resolve the ambiguity. For these reasons,  
18          Medversant will seek a stay of this lawsuit until the FCC grants or denies its  
19          petition for retroactive waiver.

## 20 21                   **8.     Manual for Complex Litigation**

22  
23           The parties do not believe that this case needs to be governed by the Manual  
24          of Complex Litigation.  
25  
26  
27



1  
2 **ii. Anticipated Deponents and Completion**  
3

4 **Plaintiff's Position:** It is currently premature to identify anticipated  
5 deponents. Defendants identified 16 witnesses in their Initial Disclosures.  
6 Accordingly, Plaintiff may need to depose up to 16 witnesses, not including  
7 experts. Also, Plaintiff may need to depose two third-party fax broadcasters.  
8

9 **Healthways' Position:** It is presently premature to identify anticipated  
10 deponents. However, Healthways will depose Plaintiff and other individuals that  
11 Plaintiff may identify in responses to written discovery. Healthways may also  
12 depose witnesses identified by Medversant and putative class members.  
13

14 **Medversant's' Position:**

15 It is presently premature to identify anticipated deponents. However,  
16 Medversant will depose Plaintiff and other individuals that Plaintiff may identify in  
17 responses to written discovery. Medversant may also depose witnesses identified  
18 by Healthways, putative class members, and other witnesses as necessary.  
19

20 **iii. Anticipated Written Discovery and Schedule of**  
21 **Completion**  
22

23 **Plaintiff's Position:** Plaintiff intends to serve follow-up written discovery  
24 to both Defendants.  
25  
26  
27  
28



1        **Healthways' Position:** Healthways intend to serve initial written discovery  
2 to Plaintiff. Healthways will also serve follow-up written discovery to Plaintiff.  
3 Healthways reserve the right to serve additional discovery, including to  
4 Medversant and putative class members.  
5  
6

7        **Medversant's' Position:** Medversant intends to serve requests for  
8 admission, document requests, and interrogatories to Plaintiff and may serve  
9 requests for admission, document requests, and interrogatories to Healthways.  
10 Medversant reserves the right to serve further discovery, including to putative class  
11 members.  
12

13                                **iv.     Expert Discovery and Proposed Dates for Disclosures**  
14

15        The parties agree to disclose experts on or before September 21, 2015,  
16 subject to the Court's ruling on the Motion to Stay.  
17

18                                **v.     Anticipated Date of Completion of Fact and Expert**  
19                                **Discovery**  
20

21        The parties agree that the last date to complete fact and expert discovery is  
22 November 30, 2015, subject to the Court's ruling on the Motion to Stay.  
23  
24  
25  
26  
27  
28



1 between or among counsel for Medversant (including Medversant's in-house  
2 counsel) created after the litigation was filed.

3  
4 **e. Rule 26(f)(3)(E)—Changes to Limitations of Discovery**

5  
6 The parties agree to abide by the limits set forth in the Federal Rules of Civil  
7 Procedure regarding discovery, without prejudice to any party's right to seek relief  
8 for good cause shown.

9  
10 **f. Protective Order**

11  
12 The parties anticipate agreeing on the terms of a protective order in the near  
13 future.

14  
15 **11. Dispositive Motions**

16  
17 **Plaintiff's Position:** Plaintiff anticipates filing a motion for partial/complete  
18 summary judgment on Defendants' statutory defenses, other liability issues, and  
19 minimum statutory damages.

20  
21 **Healthways' Position:** Healthways intend to file a motion for summary  
22 judgment on its defenses to Plaintiff's claim.

23  
24 **Medversant's' Position:** Medversant intends to make a motion for summary  
25 judgment on its defenses to Plaintiff's claim.



**For Healthways:**

Stephen H. Turner (Lewis Brisbois Bisgaard & Smith LLP), Patrik Johansson (Lewis Brisbois Bisgaard & Smith LLP) and Larissa Nefulda (Lewis Brisbois Bisgaard & Smith LLP).

**For Medversant**

Tanya L. Forsheit (Baker & Hostetler LLP) and Daniel M. Goldberg (Baker & Hostetler LLP).

**16. Independent Expert or Master**

The parties currently do not believe that there is a need for an independent expert or master.

**17. Timetable**

The parties' proposed dates for pre-trial matters and trial are contained in the Timetable attached at the end of this Report. These proposed dates are subject to the Court's ruling on the Motion to Stay.

**18. Other Matters**

The parties have no other matters to bring before the Court at this time.

1 DATED: January 26, 2015

Law Offices of Scott Z. Zimmermann  
and  
Payne & Fears LLP

5 By: s/ Scott Z. Zimmermann

6 Scott Z. Zimmermann  
7 Attorneys for Plaintiff Edward Simon, DC,  
and for all others similarly situated

8 DATED: Janaury 26, 2015

Lewis Brisbois Bisgarrrd & Smith LLP

11 By: s/ Stephen H. Turner

12 Stephen H. Turner  
13 Attorneys for Defendants Healthways, Inc.  
14 and Healthways WholeHealth Networks,  
Inc.

15 DATED: January 26, 2015

Baker & Hostetler LLP

18 By: s/ Tanya L. Forsheit

19 Tanya L. Forsheit  
20 Attorneys for Defendant Medversant  
Technologies, L.L.C.



**JUDGE BEVERLY REID O'CONNELL SCHEDULE OF TRIAL AND  
PRETRIAL DATES**

Matter	Time	Weeks before trial	Plaintiff(s) (Request)	Defendant(s) (Request)	Court Order
Trial: jury. Estimated length: four days	8:30 am		2/23/16		
[Jury trial] Hearing on Motions in Limine		-1	2/15/16		
[Court trial] File Findings of Fact and Conclusions of Law; Hearing on Motions in Limine		-1	2/15/16		
Hearing on Disputed Jury Instructions	1:30 pm	-2	2/8/16		
Pretrial Conference; Proposed Voir Dire Questions Lodged and Agreed-to Statement of Case	3:00 pm	-4	1/25/16		
Motions in Limine to be filed;		-5	1/12/16		
Lodge Pretrial Conf. Order; File Memo of Contentions of Fact and Law; Exhibit & Witness Lists; File Status Report re Settlement; File Agreed Upon Set of Jury Instructions and Verdict Forms; File Joint Statement re Disputed Instructions, Verdicts, etc.		-6	1/5/16		
Last date to conduct Settlement Conference		-8	12/22/15		
Last day for hearing motions	1:30 pm	-9	12/21/15		
Discovery cut-off [Note: Expert disclosure no later than 70 days prior to this date.]		-10	11/30/15		
Last day to Amend Pleadings or Add Parties			5/31/15		

**EXHIBIT “C”**

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

STEPHEN H. TURNER, SB# 89627

2 E-Mail: [Stephen.Turner@lewisbrisbois.com](mailto:Stephen.Turner@lewisbrisbois.com)

PATRIK JOHANSSON, SB# 231769

3 E-Mail: [Patrik.Johansson@lewisbrisbois.com](mailto:Patrik.Johansson@lewisbrisbois.com)

LARISSA G. NEFULDA, SB# 201903

4 E-Mail: [Larissa.Nefulda@lewisbrisbois.com](mailto:Larissa.Nefulda@lewisbrisbois.com)

633 W. 5<sup>th</sup> St., Ste. 4000

5 Los Angeles, CA 90071

Telephone: 213.250.1800

6 Facsimile: 213.250.7900

7 Attorneys for Defendants

HEALTHWAYS, INC.

8 and HEALTHWAYS WHOLEHEALTH

9 NETWORKS, INC.

10 UNITED STATES DISTRICT COURT

11 CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

12  
13 EDWARD SIMON, DC, individually  
14 and on behalf of all others similarly  
situated,

15 Plaintiffs,

16 vs.

17 HEALTHWAYS, INC., a Delaware  
18 corporation; HEALTHWAYS  
19 WHOLEHEALTH NETWORKS, INC.,  
a Delaware corporation;  
20 MEDVERSANT TECHNOLOGIES,  
L.L.C., a California limited liability  
21 company; and DOES 1 through 1,000,  
inclusive,

22 Defendants.

CASE NO. 2:14-cv-08022-BRO-JC

**DEFENDANT HEALTHWAYS  
WHOLEHEALTH NETWORKS,  
INC.'S RESPONSES TO  
PLAINTIFF EDWARD  
SIMON'S FIRST SET OF  
INTERROGATORIES**

[Hon. Beverly Reid O'Connell]

State Action Filed: September 16, 2014

Removed: October 16, 2014

Trial: None

23  
24 PROPOUNDING PARTY: Plaintiff, EDWARD SIMON

25 RESPONDING PARTY: Defendant, HEALTHWAYS WHOLEHEALTH  
26 NETWORKS, INC.

27 SET NO.: ONE (1)

28 Pursuant to Federal Rules of Civil Procedure 33, Defendant HEALTHWAYS

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1

DEFENDANT HEALTHWAYS WHOLEHEALTH NETWORKS, INC.'S RESPONSES  
TO PLAINTIFF EDWARD SIMON'S FIRST SET OF INTERROGATORIES

1 WHOLEHEALTH NETWORKS, INC. ("Defendant" or "HWHN") hereby provides  
2 its Responses and Objections to Plaintiff EDWARD SIMON's ("Plaintiff") First Set  
3 of Interrogatories, as follows:

4 **PRELIMINARY STATEMENT**

5 It should be noted that Defendant has not fully completed its investigation of  
6 the facts relating to the case, has not fully completed its discovery in this action, and  
7 has not completed its preparation for trial. All of the answers contained herein are  
8 based only upon such information and documents that are presently available to and  
9 specifically known to Defendant and disclose only those contentions which  
10 presently occur to Defendant. It is anticipated that further discovery, independent  
11 investigation, legal research, and analysis will supply additional facts, add meaning  
12 to known facts, as well as establish entirely new factual conclusions and legal  
13 contentions, all of which may lead to substantial additions to, changes in, and  
14 variations from the contentions herein set forth. The following responses are given  
15 without prejudice to Defendant's right to produce evidence of any subsequently  
16 discovered fact or facts which Defendant may later develop. The answers contained  
17 herein are made in a good faith effort to supply as much factual information and as  
18 much specification of legal contentions as is presently known, but should in no way  
19 be to the prejudice of Defendant in relation to further discovery, research or  
20 analysis.

21 **GENERAL OBJECTIONS AND RESERVATIONS**

22 As to each and every Interrogatory in Plaintiff's First Set of Interrogatories,  
23 Defendant states the following:

24 A. Defendant objects to Plaintiff's definition of "FAXES" on the grounds  
25 that it is overly broad, unduly burdensome, harassing and calls for information that  
26 is not relevant and not reasonably calculated to lead to the discovery of admissible  
27 evidence regarding Plaintiff's claims and Defendants' defenses in this action.

28 Defendant's responses are solely limited to the allegations in the Complaint,

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1 Exhibit 1, similar ProMailSource faxes, and the facts and circumstances surrounding  
2 Exhibit 1 and similar ProMailSource faxes.

3 B. Defendant has not yet completed its discovery and investigation of the  
4 facts giving rise to this action, but has made a diligent, good faith effort to obtain all  
5 information responsive to these requests within Defendant's possession, custody, or  
6 control. Accordingly, these responses are made without prejudice to Defendant's  
7 right to introduce prior to or at the time of trial or otherwise use any additional  
8 information it may obtain as a result of Defendant's continuing discovery and  
9 investigation, but Defendant assumes no obligation, beyond that imposed by the  
10 California Federal Rules of Civil Procedure to supplement and amend these  
11 responses to reflect witnesses, facts, or other information discovered following the  
12 date of these responses.

13 C. Defendant has based these responses on the assumption that Plaintiff  
14 did not intend to seek information protected against discovery by the attorney-client  
15 privilege or the attorney work-product doctrine, the right of privacy laws, the  
16 protection afforded trade secrets or any other applicable privilege or protection from  
17 disclosure. To the extent that these requests are intended to elicit such privileged or  
18 protected information, Defendant objects thereto as to each request and assert the  
19 applicable privilege or protection to the fullest extent permitted by law.

20 D. To the extent that Defendant responds to the requests, Defendant does  
21 not concede the relevancy of those responses to this action, nor do they concede that  
22 such responses may be used for any purpose in this action or any other action or  
23 proceeding. Defendant expressly reserves the right to object to further discovery  
24 into the subject matter of any request or any portion thereof.

25 E. Defendant objects to each request to the extent that it seeks information  
26 equally available to Plaintiff or information that is not within Defendant's  
27 possession, custody, or control.

28 F. Defendant objects to the requests to the extent that they are intended to



1 be and are overly broad, unduly burdensome and oppressive.

2 G. Defendant objects to each request to the extent they seek information  
3 that is not relevant to the subject matter of this action, and is not reasonably  
4 calculated to lead to the discovery of admissible evidence.

5 Without waiving any of the foregoing General Objections, each of which  
6 applies to each and every one of the individual responses set forth below and is  
7 incorporated by this reference therein (whether or not specifically stated in the  
8 response), Defendant responds to the individual requests as follows:

9 **RESPONSES TO FIRST SET OF INTERROGATORIES**

10 **INTERROGATORY NO. 1:**

11 Separately for each FAX (identified by date number or other identification  
12 used in connection with their production), state the dates and times (or approximate  
13 dates and times) they were sent or attempted to be sent, and the number of  
14 successful transmissions of the FAX.

15 **RESPONSE TO INTERROGATORY NO. 1:**

16 Objection. The interrogatory is overly broad, unduly burdensome and  
17 harassing. The interrogatory calls for information that is not relevant and not  
18 reasonably calculated to lead to the discovery of admissible evidence regarding  
19 Plaintiff's claims and Defendant's defenses. The interrogatory invades the privacy  
20 of third parties and calls for confidential and private information. Subject to and  
21 without waiving said objections, Defendant responds as follows: Defendant's  
22 response to this interrogatory is solely limited to the allegations in the Complaint,  
23 Exhibit 1, similar ProMailSource faxes, and the facts and circumstances surrounding  
24 Exhibit 1 and similar ProMailSource faxes. HWHN refers Plaintiff to documents  
25 which will be produced in connection with HWHN's responses to Plaintiff's First  
26 Set of Requests for Production of Documents, after the entry by the Court of a  
27 Stipulated Protective Order executed by the parties to this action.

1 **INTERROGATORY NO. 2:**

2 State how, when and through what means MEDVERSANT,  
3 HEALTHWAYS, or any other PERSON obtained the facsimile telephone numbers  
4 on the LISTS.

5 **RESPONSE TO INTERROGATORY NO. 2:**

6 Objection. The interrogatory is overly broad, unduly burdensome and  
7 harassing. The interrogatory calls for information that is not relevant and not  
8 reasonably calculated to lead to the discovery of admissible evidence regarding  
9 Plaintiff's claims and Defendant's defenses. The interrogatory invades the privacy  
10 of third parties and calls for confidential and private information. Subject to and  
11 without waiving said objections, Defendant responds as follows: Defendant's  
12 response to this interrogatory is solely limited to the allegations in the Complaint,  
13 Exhibit 1, similar ProMailSource faxes, and the facts and circumstances surrounding  
14 Exhibit 1 and similar ProMailSource faxes. The ProMailSource fax was sent to  
15 HWHN's network of practitioners, including Plaintiff. In order to join HWHN's  
16 network of practitioners, a medical care provider has to fill out and submit to  
17 HWHN an application referred to as "Participating Practitioner Agreement" and  
18 upon HWHN's approval of the Participating Practitioner Agreement, the applicant  
19 becomes a member of HWHN's network of practitioners. The Participating  
20 Practitioner Agreement requests contact information, including fax number. The  
21 ProMailSource fax was sent to the members of HWHN's network of practitioners at  
22 the fax numbers that each member voluntarily provided in their Participating  
23 Practitioner Agreement. HWHN refers Plaintiff to documents which will be  
24 produced in connection with HWHN's responses to Plaintiff's First Set of Requests  
25 for Production of Documents, after the entry by the Court of a Stipulated Protective  
26 Order executed by the parties to this action.

27 **INTERROGATORY NO. 3:**

28 Separately for each FAX, IDENTIFY each SENDER of the FAX.

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1 **RESPONSE TO INTERROGATORY NO. 3:**

2       Objection. The interrogatory is overly broad, unduly burdensome and  
3 harassing. The interrogatory calls for information that is not relevant and not  
4 reasonably calculated to lead to the discovery of admissible evidence regarding  
5 Plaintiff's claims and Defendant's defenses. The interrogatory invades the privacy  
6 of third parties and calls for confidential and private information. Subject to and  
7 without waiving said objections, Defendant responds as follows: Defendant's  
8 response to this interrogatory is solely limited to the allegations in the Complaint,  
9 Exhibit 1, similar ProMailSource faxes, and the facts and circumstances surrounding  
10 Exhibit 1 and similar ProMailSource faxes. HWHN and Medversant Technologies,  
11 LLC were the senders of the ProMailSource faxes. HWHN refers Plaintiff to  
12 documents which will be produced in connection with HWHN's responses to  
13 Plaintiff's First Set of Requests for Production of Documents, after the entry by the  
14 Court of a Stipulated Protective Order executed by the parties to this action.

15 **INTERROGATORY NO. 4:**

16       IDENTIFY each PERSON who you contend gave PRIOR EXPRESS  
17 INVITATION OR PERMISSION to be sent the FAXES.

18 **RESPONSE TO INTERROGATORY NO. 4:**

19       Objection. The interrogatory is overly broad, unduly burdensome and  
20 harassing. The interrogatory calls for information that is not relevant and not  
21 reasonably calculated to lead to the discovery of admissible evidence regarding  
22 Plaintiff's claims and Defendant's defenses. The interrogatory invades the privacy  
23 of third parties and calls for confidential and private information. Subject to and  
24 without waiving said objections, Defendant responds as follows: Defendant's  
25 response to this interrogatory is solely limited to the allegations in the Complaint,  
26 Exhibit 1, similar ProMailSource faxes, and the facts and circumstances surrounding  
27 Exhibit 1 and similar ProMailSource faxes. The ProMailSource fax was sent to  
28 HWHN's network of practitioners, including Plaintiff. In order to join HWHN's

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1 network of practitioners, a medical care provider has to fill out and submit to  
2 HWHN an application referred to as "Participating Practitioner Agreement" and  
3 upon HWHN's approval of the Participating Practitioner Agreement, the applicant  
4 becomes a member of HWHN's network of practitioners. The Participating  
5 Practitioner Agreement requests contact information, including fax number. The  
6 ProMailSource fax was sent to the members of HWHN's network of practitioners at  
7 the fax numbers that each member voluntarily provided in their Participating  
8 Practitioner Agreement. HWHN refers Plaintiff to documents which will be  
9 produced in connection with HWHN's responses to Plaintiff's First Set of Requests  
10 for Production of Documents, after the entry by the Court of a Stipulated Protective  
11 Order executed by the parties to this action.

12 **INTERROGATORY NO. 5:**

13 For each PERSON identified or mentioned in response to Interrogatory No. 4,  
14 describe the COMMUNICATIONS (including date, nature, content and parties  
15 thereto) by which such PERSON gave PRIOR EXPRESS INVITATION OR  
16 PERMISSION.

17 **RESPONSE TO INTERROGATORY NO. 5:**

18 Objection. The interrogatory is overly broad, unduly burdensome and  
19 harassing. The interrogatory calls for information that is not relevant and not  
20 reasonably calculated to lead to the discovery of admissible evidence regarding  
21 Plaintiff's claims and Defendant's defenses. The interrogatory invades the privacy  
22 of third parties and calls for confidential and private information. Subject to and  
23 without waiving said objections, Defendant responds as follows: Defendant's  
24 response to this interrogatory is solely limited to the allegations in the Complaint,  
25 Exhibit 1, similar ProMailSource faxes, and the facts and circumstances surrounding  
26 Exhibit 1 and similar ProMailSource faxes. The ProMailSource fax was sent to  
27 HWHN's network of practitioners, including Plaintiff. In order to join HWHN's  
28 network of practitioners, a medical care provider has to fill out and submit to



1 HWHN an application referred to as "Participating Practitioner Agreement" and  
2 upon HWHN's approval of the Participating Practitioner Agreement, the applicant  
3 becomes a member of HWHN's network of practitioners. The Participating  
4 Practitioner Agreement requests contact information, including fax number. The  
5 ProMailSource fax was sent to the members of HWHN's network of practitioners at  
6 the fax numbers that each member voluntarily provided in their Participating  
7 Practitioner Agreement. HWHN refers Plaintiff to documents which will be  
8 produced in connection with HWHN's responses to Plaintiff's First Set of Requests  
9 for Production of Documents, after the entry by the Court of a Stipulated Protective  
10 Order executed by the parties to this action.

11 **INTERROGATORY NO. 6:**

12 IDENTIFY each PERSON who you contend had an ESTABLISHED  
13 BUSINESS RELATIONSHIP with MEDVERSANT at the time the FAXES were  
14 sent or attempted to be sent to such PERSON.

15 **RESPONSE TO INTERROGATORY NO. 6:**

16 Objection. The interrogatory is overly broad, unduly burdensome and  
17 harassing. The interrogatory calls for information that is not relevant and not  
18 reasonably calculated to lead to the discovery of admissible evidence regarding  
19 Plaintiff's claims and Defendant's defenses. The interrogatory invades the privacy  
20 of third parties and calls for confidential and private information. Subject to and  
21 without waiving said objections, Defendant responds as follows: Defendant's  
22 response to this interrogatory is solely limited to the allegations in the Complaint,  
23 Exhibit 1, similar ProMailSource faxes, and the facts and circumstances surrounding  
24 Exhibit 1 and similar ProMailSource faxes. HWHN had an established business  
25 relationship with each recipient and attempted recipient of the ProMailSource faxes,  
26 and Medversant is a vendor to HWHN. Medversant sent the ProMailSource faxes at  
27 HWHN's request.

28 ///

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1 **INTERROGATORY NO. 7:**

2 For each PERSON identified or mentioned in response to Interrogatory No. 6,  
3 state the circumstances of how, when and with whom the ESTABLISHED  
4 BUSINESS RELATIONSHIP was started or otherwise was formed.

5 **RESPONSE TO INTERROGATORY NO. 7:**

6 Objection. The interrogatory is overly broad, unduly burdensome and  
7 harassing. The interrogatory calls for information that is not relevant and not  
8 reasonably calculated to lead to the discovery of admissible evidence regarding  
9 Plaintiff's claims and Defendant's defenses. The interrogatory invades the privacy  
10 of third parties and calls for confidential and private information. Subject to and  
11 without waiving said objections, Defendant responds as follows: Defendant's  
12 response to this interrogatory is solely limited to the allegations in the Complaint,  
13 Exhibit 1, similar ProMailSource faxes, and the facts and circumstances surrounding  
14 Exhibit 1 and similar ProMailSource faxes. Not applicable.

15 **INTERROGATORY NO. 8:**

16 IDENTIFY each PERSON who you contend had an ESTABLISHED  
17 BUSINESS RELATIONSHIP with HEALTHWAYS at the time the FAXES were  
18 sent or attempted to be sent to such PERSON.

19 **RESPONSE TO INTERROGATORY NO. 8:**

20 Objection. The interrogatory is overly broad, unduly burdensome and  
21 harassing. The interrogatory calls for information that is not relevant and not  
22 reasonably calculated to lead to the discovery of admissible evidence regarding  
23 Plaintiff's claims and Defendant's defenses. The interrogatory invades the privacy  
24 of third parties and calls for confidential and private information. Subject to and  
25 without waiving said objections, Defendant responds as follows: Defendant's  
26 response to this interrogatory is solely limited to the allegations in the Complaint,  
27 Exhibit 1, similar ProMailSource faxes, and the facts and circumstances surrounding  
28 Exhibit 1 and similar ProMailSource faxes. The ProMailSource faxes were only

1 sent to members of HWHN. In order to become a member of HWHN, a medical  
2 care provider has to fill out and submit a Participating Practitioner Agreement to  
3 HWHN. HWHN has an established business relationship with every person that the  
4 ProMailSource faxes were sent to. HWHN refers Plaintiff to documents which will  
5 be produced in connection with HWHN's responses to Plaintiff's First Set of  
6 Requests for Production of Documents, after the entry by the Court of a Stipulated  
7 Protective Order executed by the parties to this action.

8 **INTERROGATORY NO. 9:**

9 For each PERSON identified or mentioned in response to Interrogatory No. 8,  
10 state the circumstances of how, when and with whom the ESTABLISHED  
11 BUSINESS RELATIONSHIP was started or otherwise was formed.

12 **RESPONSE TO INTERROGATORY NO. 9:**

13 Objection. The interrogatory is overly broad, unduly burdensome and  
14 harassing. The interrogatory calls for information that is not relevant and not  
15 reasonably calculated to lead to the discovery of admissible evidence regarding  
16 Plaintiff's claims and Defendant's defenses. The interrogatory invades the privacy  
17 of third parties and calls for confidential and private information. Subject to and  
18 without waiving said objections, Defendant responds as follows: Defendant's  
19 response to this interrogatory is solely limited to the allegations in the Complaint,  
20 Exhibit 1, similar ProMailSource faxes, and the facts and circumstances surrounding  
21 Exhibit 1 and similar ProMailSource faxes. The ProMailSource fax was only sent to  
22 HWHN's network of practitioners, including Plaintiff. In order to join HWHN's  
23 network of practitioners, a medical care provider has to fill out and submit to  
24 HWHN an application referred to as "Participating Practitioner Agreement" and  
25 upon HWHN's approval of the Participating Practitioner Agreement, the applicant  
26 becomes a member of HWHN's network of practitioners. The Participating  
27 Practitioner Agreement requests contact information, including fax number. The  
28 ProMailSource fax was sent to the members of HWHN's network of practitioners at



1 the fax numbers that each member voluntarily provided in their Participating  
2 Practitioner Agreement. HWHN refers Plaintiff to documents which will be  
3 produced in connection with HWHN's responses to Plaintiff's First Set of Requests  
4 for Production of Documents, after the entry by the Court of a Stipulated Protective  
5 Order executed by the parties to this action.

6 **INTERROGATORY NO. 10:**

7 If your response to any Request for Admission concurrently propounded by  
8 PLAINTIFF is anything other than an unqualified admission, state all facts you  
9 contend support your response.

10 **RESPONSE TO INTERROGATORY NO. 10:**

11 Defendant's response to this interrogatory is solely limited to the allegations  
12 in the Complaint, Exhibit 1, similar ProMailSource faxes, and the facts and  
13 circumstances surrounding Exhibit 1 and similar ProMailSource faxes.

14 **Request For Admission No. 11:**

15 Admit that YOU did not have an ESTABLISHED BUSINESS  
16 RELATIONSHIP with PLAINTIFF at the time the EXHIBIT 1 was sent via  
17 facsimile transmission to (818) 761-8705.

18 **Response To Request For Admission No. 11:**

19 Objection. The request calls for a legal conclusion. Subject to and without  
20 waiving said objections, Defendant responds as follows: Deny.

21 **Facts to Support Response to Request for Admission No. 1:**

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Defendant's response to this request is solely limited to the allegations in the  
2 Complaint, Exhibit 1, similar ProMailSource faxes, and the facts and circumstances  
3 surrounding Exhibit 1 and similar ProMailSource faxes. The ProMailSource faxes  
4 were only sent to members of HWHN's network of practitioners. Plaintiff has been  
5 a member of HWHN's network of practitioners since April 2008. In order to  
6 become a member of HWHN, a medical care provider has to fill out and submit a  
7 Participating Practitioner Agreement to HWHN. HWHN has an established  
8 business relationship with every person that the ProMailSource faxes were sent to.

9 **Request For Admission No. 12:**

10 Admit that PLAINTIFF did not give PRIOR EXPRESS INVITATION OR  
11 PERMISSION to be sent EXHIBIT 1 via facsimile transmission to (818) 761-8705.

12 **Response To Request For Admission No. 12:**

13 Objection. The request calls for a legal conclusion. Subject to and without  
14 waiving said objections, Defendant responds as follows: Deny.

15 **Facts to Support Response to Request for Admission No. 2:**

16 Defendant's response to this request is solely limited to the allegations in the  
17 Complaint, Exhibit 1, similar ProMailSource faxes, and the facts and circumstances  
18 surrounding Exhibit 1 and similar ProMailSource faxes. HWHN had prior express  
19 written consent to send the ProMailSource faxes from every member of HWHN.  
20 Plaintiff has been a member of HWHN since April 2008. In order to become a  
21 member of HWHN, a medical care provider has to fill out and submit a Participating  
22 Practitioner Agreement to join HWHN. Plaintiff filled out and submitted a  
23 Participating Practitioner Agreement to join HWHN on April 21, 2008. The  
24 Participating Practitioner Agreement requests contact information, including fax  
25 number. The ProMailSource fax was sent to Plaintiff at (818) 761-8705, which is  
26 the fax number voluntarily provided by Plaintiff in his Participating Practitioner  
27 Agreement.



1       **Request For Admission No. 13:**

2       Admit that the sending of EXHIBIT 1 via facsimile transmission to  
3 (818) 761-8705 violated the JFPA.

4       **Response To Request For Admission No. 13:**

5       Objection. The request calls for a legal conclusion. Subject to and without  
6 waiving said objections, Defendant responds as follows: Deny.

7       **Facts to Support Response to Request for Admission No. 3:**

8       Defendant's response to this request is solely limited to the allegations in the  
9 Complaint, Exhibit 1, similar ProMailSource faxes, and the facts and circumstances  
10 surrounding Exhibit 1 and similar ProMailSource faxes. HWHN had prior express  
11 written consent to send the ProMailSource faxes from every member of HWHN.  
12 Plaintiff has been a member of HWHN since April 2008. In order to become a  
13 member of HWHN, a medical care provider has to fill out and submit a Participating  
14 Practitioner Agreement to join HWHN. Plaintiff filled out and submitted a  
15 Participating Practitioner Agreement to join HWHN on April 21, 2008. The

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1 Participating Practitioner Agreement requests contact information, including fax  
2 number. The ProMailSource fax was sent to Plaintiff at (818) 761-8705, which is  
3 the fax number voluntarily provided by Plaintiff in his Participating Practitioner  
4 Agreement. HWHN had Plaintiff's prior express written consent and had an  
5 established business relationship with Plaintiff at the time the ProMailSource fax  
6 was sent.

7  
8 DATED: January 12 2015

LEWIS BRISBOIS BISGAARD & SMITH LLP

9  
10  
11 By: 

Stephen H. Turner

Patrik Johansson

Larissa G. Nefulda

Attorneys for Defendants

HEALTHWAYS, INC. and

HEALTHWAYS WHOLEHEALTH  
NETWORKS, INC.

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VERIFICATION

I have read the foregoing DEFENDANT HEALTHWAYS WHOLEHEALTH NETWORKS, INC.'S RESPONSES TO PLAINTIFF EDWARD SIMON'S FIRST SET OF INTERROGATORIES and know its contents.

☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☒ I am the Vice President of Physical Medicine Operations for Healthways WholeHealth Networks, Inc., a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

☒ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for Healthways WholeHealth Networks, Inc., a party to this action. Such party is absent from the county where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on January 9, 2015, at Sterling, Virginia.

I declare under penalty of perjury under the laws of the States of California and Virginia, and the United States of American that the foregoing is true and correct.

Martie Stabelfeldt MHSA  
Print Name of Signatory

M Stabelfeldt  
Signature

**EXHIBIT “D”**

Tanya L. Forsheit, Bar No. 192472  
Email: tforsheit@bakerlaw.com  
Daniel M. Goldberg, Bar No. 280718  
Email: dgoldberg@bakerlaw.com  
**BAKER & HOSTETLER LLP**  
11601 Wilshire Boulevard, Suite 1400  
Los Angeles, CA 90025-0509  
Telephone: 310.820.8800  
Facsimile: 310.820.8859

Attorneys for Defendant  
MEDVERSANT TECHNOLOGIES, L.L.C.,  
incorrectly named as MEDVERSANT  
TECHNOLOGIES, L.L.C., a California limited  
liability company

**IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

EDWARD SIMON, DC, individually  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

HEALTHWAYS, INC., a Delaware  
corporation, HEALTHWAYS  
WHOLEHEALTH NETWORKS, INC.,  
a Delaware corporation;  
MEDVERSANT TECHNOLOGIES,  
L.L.C., a California limited liability  
company; and DOES 1 through 1,000,  
inclusive,

Defendants.

Case No.: LACV14-8022 BRO (JCx)

[ Hon. Beverly Reid O'Connell ]

**CLASS ACTION**

**DEFENDANT MEDVERSANT  
TECHNOLOGIES, L.L.C.'S  
RESPONSES TO PLAINTIFF'S  
FIRST SET OF  
INTERROGATORIES**

Action Filed: September 16, 2014  
Removal Filed: October 16, 2014  
Trial Date: [None Set]

PROPOUNDING PARTY: PLAINTIFF EDWARD SIMON, DC

RESPONDING PARTY: DEFENDANT MEDVERSANT  
TECHNOLOGIES, L.L.C.

SET NO.: ONE



1 Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendant  
2 MEDVERSANT TECHNOLOGIES, L.L.C. ("Medversant") hereby answers,  
3 responds, and objects to Plaintiff EDWARD SIMON, DC's ("Plaintiff") First Set  
4 of Interrogatories to Medversant ("Interrogatories").

5 **PRELIMINARY STATEMENT**

6 All responses that follow are made subject to this preliminary statement.  
7 The responses appearing below are made subject to and without waiver of (1) all  
8 questions as to the admissibility as evidence of the response made, any documents  
9 produced or to which reference is made or the subject matter of such documents;  
10 (2) the right to object to other discovery directed to the subject matter of the  
11 requests or the responses; and (3) the right to make additional objections or seek  
12 protective orders.

13 **GENERAL OBJECTIONS**

14 The following general objections apply to each individual interrogatory and  
15 are incorporated into each response by Medversant.

16 1. Medversant responds to each individual interrogatory with the  
17 information and documentation that Medversant has been able to discover to date.  
18 Medversant asserts that its discovery is ongoing and therefore reserves its right to  
19 supplement and modify its responses should further information or/and  
20 documentation come into Medversant's possession, or be discovered, as this action  
21 progresses.

22 2. Medversant objects to Plaintiff's definition of "FAX" or "FAXES" on  
23 the grounds that the definition includes information beyond the scope of  
24 permissible discovery, in particular information not concerning ProMailSource or  
25 Healthways, and that the definition assumes a legal conclusion, namely that  
26 FAXES were "sent." For purposes of these responses, "FAX" or "FAXES" means  
27 any and all materials transmitted by Medversant by facsimile to more than 25  
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1 telephone numbers, commencing on September 16, 2010 through the date of these  
2 responses, which discuss, describe, or promote ProMailSource.

3 3. Medversant objects to Plaintiff's definition of "SENDER" on the  
4 grounds that the definition assumes a legal conclusion, namely that FAXES were  
5 "sent." For purposes of this response, "SENDER" means any person or entity on  
6 whose behalf a fax was transmitted or whose goods or services are referenced in a  
7 fax.

8 4. Medversant objects to Plaintiff's definition of "LIST" or "LISTS" on  
9 the grounds that the definition assumes a legal conclusion, namely that FAXES  
10 were "sent." Medversant further objects to Plaintiff's definition of "LIST" or  
11 "LISTS" on the grounds that the term is overbroad and that its incorporation into  
12 any particular request causes that request to seek information that is neither  
13 relevant nor reasonably calculated to lead to the discovery of admissible evidence.

14 5. Medversant objects to Plaintiff's definition of "PRIOR EXPRESS  
15 INVITATION OR PERMISSION" on the grounds that the definition is vague and  
16 ambiguous because the statutory provision incorporated by Plaintiff into that  
17 definition, 47 U.S.C. § 227(a)(5), does not define the term "prior express invitation  
18 or permission."

19 6. Medversant objects to each individual interrogatory on the grounds  
20 and to the extent that each interrogatory seeks information protected by the  
21 attorney-client, attorney work-product, and/or common interest privileges, or the  
22 right to privacy of Medversant and/or other persons guaranteed by the United  
23 States Constitution and/or any other applicable rule or privilege. Such information  
24 shall not be provided and any inadvertent disclosure thereof shall not be deemed a  
25 waiver of any privilege whatsoever. Further, all objections stated on the grounds of  
26 the attorney-client privilege or work product doctrine are intended to apply to all  
27 information that is privileged or protected, either in this litigation, or by virtue of  
28 any prior legal proceeding. Medversant will produce a privilege log of responsive

1 privileged materials, if any, on a future date to be mutually agreed upon by the  
2 parties. Throughout these responses, any reference to "privilege" is meant to  
3 include attorney-client privilege, attorney work-product doctrine and/or common  
4 interest privilege.

5 7. Medversant objects to each individual interrogatory on the grounds  
6 and to the extent that each interrogatory seeks discovery of information that is  
7 neither relevant nor reasonably calculated to lead to the discovery of admissible  
8 evidence.

9 8. Medversant objects to each individual interrogatory on the grounds  
10 and to the extent that each interrogatory is vague, ambiguous and unintelligible.

11 9. By setting forth specific objections below, Medversant is not waiving  
12 any of the objections set forth above. Furthermore, the specification of certain  
13 general objections in responding to certain requests for information is for  
14 explanatory purposes only and is not intended to imply a waiver of the general  
15 objections in those instances in which they are not specifically mentioned.

16 **RESPONSES TO INTERROGATORIES – SET ONE**

17 **INTERROGATORY NO. 1:**

18 Separately for each FAX (identified by bate number or other identification  
19 used in connection with their production), state the dates and times (or approximate  
20 dates and times) they were sent or attempted to be sent, and the number of  
21 successful transmissions of the FAX.

22 **RESPONSE FOR INTERROGATORY NO. 1:**

23 Medversant objects to this request on the grounds that the request seeks  
24 information beyond the scope of permissible discovery, in particular information  
25 that does not concern HEALTHWAYS or ProMailSource and information  
26 regarding facsimile communications transmitted by HEALTHWAYS or third  
27 parties outside the control of Medversant. Medversant further objects to this  
28 request on the grounds that the definition of FAX assumes a legal conclusion and

1 is overbroad and that its incorporation into this request causes the request to seek  
2 information that is neither relevant nor reasonably calculated to lead to the  
3 discovery of admissible evidence. Subject to and without waiving the foregoing,  
4 Medversant responds as follows:

5 Subject to the entry by the Court of a Stipulated Protective Order executed  
6 by the parties to this action, Medversant will produce, at a time beginning in  
7 January 2015 to be mutually agreed upon by the parties, non-privileged documents  
8 in its possession, custody or control located following a reasonable good faith  
9 search sufficient to show the dates on which Medversant transmitted or attempted  
10 to transmit by facsimile to more than 25 telephone numbers materials that discuss,  
11 describe, or promote ProMailSource, and the number of such transmissions that  
12 were successful. Medversant does not have in its possession, custody or control  
13 information regarding the specific times at which such transmissions or attempted  
14 transmissions occurred.

15 **INTERROGATORY NO. 2:**

16 State how, when and through what means MEDVERSANT,  
17 HEALTHWAYS, or any other PERSON obtained the facsimile telephone numbers  
18 on the LISTS.

19 **RESPONSE TO INTERROGATORY NO. 2:**

20 Medversant objects to this request on the grounds that the request seeks  
21 information beyond the scope of permissible discovery, in particular information  
22 not concerning HEALTHWAYS or ProMailSource. Medversant further objects to  
23 this request on the grounds that the request seeks information that violates the  
24 privacy rights of third parties. Medversant further objects to this request on the  
25 grounds that the definition of LISTS assumes a legal conclusion and is overbroad  
26 and that its incorporation into this request causes the request to seek information  
27 that is neither relevant nor reasonably calculated to lead to the discovery of  
28 admissible evidence. Medversant further objects to this request on the grounds and

1 to the extent that the request seeks privileged and/or confidential information.

2 Subject to and without waiving the foregoing, Medversant responds as follows:

3 Subject to the entry by the Court of a Stipulated Protective Order executed  
4 by the parties to this action, Medversant will produce, at a time beginning in  
5 January 2015 to be mutually agreed upon by the parties, non-privileged documents  
6 in its possession, custody or control located following a reasonable good faith  
7 search sufficient to show how Medversant obtained the facsimile numbers of the  
8 intended and/or actual recipients of the materials referenced in Medversant's  
9 response to Interrogatory No. 1 above.

10 **INTERROGATORY NO. 3:**

11 Separately for each FAX, IDENTIFY each SENDER of the FAX.

12 **RESPONSE TO INTERROGATORY NO. 3:**

13 Medversant objects to this request on the grounds that the request seeks  
14 information beyond the scope of permissible discovery, in particular information  
15 not concerning HEALTHWAYS or ProMailSource and information regarding  
16 facsimile communications transmitted by HEALTHWAYS or third parties outside  
17 the control of Medversant. Medversant further objects to this request on the  
18 grounds that the request seeks information that violates the privacy rights of third  
19 parties. Medversant further objects to this request on the grounds that the  
20 definitions of FAX and SENDER assume a legal conclusion and are overbroad and  
21 that their incorporation into this request causes the request to seek information that  
22 is neither relevant nor reasonably calculated to lead to the discovery of admissible  
23 evidence. Subject to and without waiving the foregoing, Medversant responds as  
24 follows:

25 Subject to the entry by the Court of a Stipulated Protective Order executed  
26 by the parties to this action, Medversant will produce, at a time beginning in  
27 January 2015 to be mutually agreed upon by the parties, non-privileged documents  
28 in its possession, custody or control located following a reasonable good faith



1 search sufficient to identify the PERSON who transmitted the materials referenced  
2 in Medversant's response to Interrogatory No. 1 above.

3 **INTERROGATORY NO. 4:**

4 IDENTIFY each PERSON who you contend gave PRIOR EXPRESS  
5 INVITATION OR PERMISSION to be sent the FAXES.

6 **RESPONSE TO INTERROGATORY NO. 4:**

7 Medversant objects to this request on the grounds that the request is  
8 oppressive and burdensome in that compliance would be unreasonably difficult  
9 and expensive. Medversant further objects to this request on the grounds that the  
10 request seeks information beyond the scope of permissible discovery, in particular  
11 information not concerning HEALTHWAYS or ProMailSource and information  
12 regarding facsimile communications transmitted by HEALTHWAYS or third  
13 parties outside the control of Medversant. Medversant further objects to this  
14 request on the grounds that the request seeks information that violates the privacy  
15 rights of third parties. Medversant further objects to this request on the grounds  
16 that Plaintiff's definition of PRIOR EXPRESS INVITATION OR PERMISSION  
17 is vague and ambiguous because the statutory provision incorporated by Plaintiff  
18 into that definition, 47 U.S.C. § 227(a)(5), does not define the term "prior express  
19 invitation or permission." Medversant further objects to this request on the grounds  
20 that the term sent and the definitions of FAXES assume a legal conclusion and are  
21 overbroad and that their incorporation into this request causes the request to seek  
22 information that is neither relevant nor reasonably calculated to lead to the  
23 discovery of admissible evidence. Medversant further objects to this request on the  
24 grounds and to the extent that the request seeks privileged and/or confidential  
25 information. Subject to and without waiving the foregoing, Medversant responds  
26 as follows:

27 Medversant was informed by HEALTHWAYS that all of the recipients and  
28 intended recipients of the materials referenced in Medversant's response to



Interrogatory No. 1 above gave prior express invitation or permission to receive those materials.

**INTERROGATORY NO. 5:**

For each PERSON identified or mentioned in response to Interrogatory No. 4, describe the COMMUNICATIONS (including date, nature, content and parties thereto) by which such PERSON gave PRIOR EXPRESS INVITATION OR PERMISSION.

**RESPONSE TO INTERROGATORY NO. 5:**

Medversant objects to this request on the grounds that the request is oppressive and burdensome in that compliance would be unreasonably difficult and expensive. Medversant objects to this request on the grounds that COMMUNICATIONS is not a defined term and is ambiguous. Medversant further objects to this request on the grounds that the request seeks information beyond the scope of permissible discovery, in particular information not concerning HEALTHWAYS or ProMailSource and information regarding facsimile communications transmitted by HEALTHWAYS or third parties outside the control of Medversant. Medversant further objects to this request on the grounds that the request seeks information that violates the privacy rights of third parties. Medversant further objects to this request on the grounds that Plaintiff's definition of PRIOR EXPRESS INVITATION OR PERMISSION is vague and ambiguous because the statutory provision incorporated by Plaintiff into that definition, 47 U.S.C. § 227(a)(5), does not define the term "prior express invitation or permission." Medversant further objects to this request on the grounds and to the extent that the request seeks privileged and/or confidential information. Subject to and without waiving the foregoing, Medversant responds as follows:

Joe Beckerman of Medversant was informed by Martie Stabelfeldt and Megan Walker of HEALTHWAYS during teleconference on July 16, 2014, that all of the recipients and intended recipients of the materials referenced in

1 Medversant's response to Interrogatory No. 1 above gave prior express invitation  
2 or permission to receive those materials.

3 **INTERROGATORY NO. 6:**

4 IDENTIFY each PERSON who you contend had an ESTABLISHED  
5 BUSINESS RELATIONSHIP with MEDVERSANT at the time the FAXES were  
6 sent or attempted to be sent to such PERSON.

7 **RESPONSE TO INTERROGATORY NO. 6:**

8 Medversant objects to this request on the grounds that the request is  
9 oppressive and burdensome in that compliance would be unreasonably difficult  
10 and expensive. Medversant further objects to this request on the grounds that the  
11 request seeks information beyond the scope of permissible discovery, in particular  
12 information not concerning HEALTHWAYS or ProMailSource and information  
13 regarding facsimile communications transmitted by HEALTHWAYS or third  
14 parties outside the control of Medversant. Medversant further objects to this  
15 request on the grounds that the request seeks information that violates the privacy  
16 rights of third parties. Medversant further objects to this request on the grounds  
17 that the term sent and the definition of FAXES assume a legal conclusion and are  
18 overbroad and that their incorporation into this request causes the request to seek  
19 information that is neither relevant nor reasonably calculated to lead to the  
20 discovery of admissible evidence. Medversant further objects to this request on the  
21 grounds and to the extent that the request seeks privileged and/or confidential  
22 information. Subject to and without waiving the foregoing, Medversant responds  
23 as follows:

24 Subject to the entry by the Court of a Stipulated Protective Order executed  
25 by the parties to this action, Medversant will produce, at a time beginning in  
26 January 2015 to be mutually agreed upon by the parties, non-privileged documents  
27 sufficient to show the creation, formation or commencement of any  
28 ESTABLISHED BUSINESS RELATIONSHIP between Medversant and any

1 recipient or intended recipient of the materials referenced in Medversant's  
2 response to Interrogatory No. 1 above.

3 **INTERROGATORY NO. 7:**

4 For each PERSON identified or mentioned in response to Interrogatory No.  
5 6, state the circumstances of how, when and with whom the ESTABLISHED  
6 BUSINESS RELATIONSHIP was started or otherwise was formed.

7 **RESPONSE TO INTERROGATORY NO. 7:**

8 Medversant objects to this request on the grounds that the request is  
9 oppressive and burdensome in that compliance would be unreasonably difficult  
10 and expensive. Medversant further objects to this request on the grounds that the  
11 request seeks information beyond the scope of permissible discovery, in particular  
12 information not concerning HEALTHWAYS or ProMailSource and information  
13 regarding facsimile communications transmitted by HEALTHWAYS or third  
14 parties outside the control of Medversant. Medversant further objects to this  
15 request on the grounds that the request seeks information that violates the privacy  
16 rights of third parties. Medversant further objects to this request on the grounds  
17 and to the extent that the request seeks privileged and/or confidential information.  
18 Subject to and without waiving the foregoing, Medversant responds as follows:

19 Subject to the entry by the Court of a Stipulated Protective Order executed  
20 by the parties to this action, Medversant will produce, at a time beginning in  
21 January 2015 to be mutually agreed upon by the parties, non-privileged documents  
22 sufficient to show the creation, formation or commencement of any  
23 ESTABLISHED BUSINESS RELATIONSHIP between Medversant and any  
24 recipient or intended recipient of the materials referenced in Medversant's  
25 response to Interrogatory No. 1 above.



1 **INTERROGATORY NO. 8:**

2 IDENTIFY each PERSON who you contend had an ESTABLISHED  
3 BUSINESS RELATIONSHIP with HEALTHWAYS at the time the FAXES were  
4 sent or attempted to be sent to such PERSON.

5 **RESPONSE TO INTERROGATORY NO. 8:**

6 Medversant objects to this request on the grounds that the request is  
7 oppressive and burdensome in that compliance would be unreasonably difficult  
8 and expensive. Medversant further objects to this request on the grounds that the  
9 request seeks information beyond the scope of permissible discovery, in particular  
10 information not concerning HEALTHWAYS or ProMailSource and information  
11 regarding facsimile communications transmitted by HEALTHWAYS or third  
12 parties outside the control of Medversant. Medversant further objects to this  
13 request on the grounds that the request seeks information that violates the privacy  
14 rights of third parties. Medversant further objects to this request on the grounds  
15 that the term sent and the definition of FAXES assume a legal conclusion and are  
16 overbroad and that their incorporation into this request causes the request to seek  
17 information that is neither relevant nor reasonably calculated to lead to the  
18 discovery of admissible evidence. Medversant further objects to this request on the  
19 grounds and to the extent that the request seeks privileged and/or confidential  
20 information. Medversant further objects to this request on the grounds that the  
21 information requested is in the possession, custody or control of HEALTHWAYS,  
22 and should be obtained through discovery propounded on HEALTHWAYS.  
23 Subject to and without waiving the foregoing, Medversant responds as follows:

24 Joe Beckerman of Medversant was informed by Martie Stabelfeldt and  
25 Megan Walker of HEALTHWAYS during teleconference on July 16, 2014, that all  
26 of the recipients and intended recipients of the materials referenced in  
27 Medversant's response to Interrogatory No. 1 above had an existing business  
28

1 relationship with HEALTHWAYS because they were all providers in the  
2 HEALTHWAYS' network.

3 **INTERROGATORY NO. 9:**

4 For each PERSON identified or mentioned in response to Interrogatory No.  
5 8, state the circumstances of how, when and with whom the ESTABLISHED  
6 BUSINESS RELATIONSHIP was started or otherwise was formed.

7 **RESPONSE TO INTERROGATORY NO. 9:**

8 Medversant objects to this request on the grounds that the request is  
9 oppressive and burdensome in that compliance would be unreasonably difficult  
10 and expensive. Medversant further objects to this request on the grounds that the  
11 request seeks information beyond the scope of permissible discovery, in particular  
12 information not concerning HEALTHWAYS or ProMailSource and information  
13 regarding facsimile communications transmitted by HEALTHWAYS or third  
14 parties outside the control of Medversant. Medversant further objects to this  
15 request on the grounds that the request seeks information that violates the privacy  
16 rights of third parties. Medversant further objects to this request on the grounds  
17 and to the extent that the request seeks privileged and/or confidential information.  
18 Medversant further objects to this request on the grounds that the information  
19 requested is in the possession, custody or control of HEALTHWAYS, and should  
20 be obtained through discovery propounded on HEALTHWAYS.

21 **INTERROGATORY NO. 10:**

22 If your response to any Request for Admission concurrently propounded by  
23 PLAINTIFF is anything other than an unqualified admission, state all facts you  
24 contend support your response.

25 **RESPONSE TO INTERROGATORY NO. 10:**

26 Medversant objects to this request on the grounds that the request is  
27 oppressive and burdensome in that compliance would be unreasonably difficult  
28 and expensive. Medversant further objects to this request on the grounds that the



1 request seeks information that violates the privacy rights of third parties.  
2 Medversant further objects to this request on the grounds that the request seeks  
3 privileged and/or confidential information. Subject to and without waiving the  
4 foregoing, Medversant responds as follows:

5 **REQUEST FOR ADMISSION NO. 1:**

6 Plaintiff had an established business relationship with Healthways as he was  
7 part of the Healthways provider network. This established business relationship  
8 extended to Medversant.

9 **REQUEST FOR ADMISSION NO. 2:**

10 Plaintiff gave his prior express invitation or permission to receive facsimiles  
11 when he voluntarily gave Healthways his facsimile telephone number in his  
12 Healthways Provider Agreement. This prior express invitation or permission  
13 extended to Medversant.

14 **REQUEST FOR ADMISSION NO. 3:**

15 The facsimile transmission of Exhibit 1 to (818) 761-8705 did not violate the  
16 JFPA for the reasons set forth in Medversant's Affirmative Defenses, including,  
17 but not limited to, that the facsimile was not an unsolicited advertisement, Plaintiff  
18 gave his prior express invitation or permission to receive facsimiles, Plaintiff did  
19 not object to any facsimiles sent to him prior to August 13, 2014, any facsimiles  
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2 transmitted by Medversant were at the direction of Healthways, and any alleged  
3 violation was not willful or knowing.

4  
5 Dated: December 22, 2014

Respectfully submitted,

6  
7 BAKER & HOSTETLER LLP

8  
9 By:

  
TANYA L. FORSHEIT  
DANIEL M. GOLDBERG

10  
11 Attorneys for Defendant  
12 MEDVERSANT TECHNOLOGIES, L.L.C.,  
13 incorrectly named as MEDVERSANT  
14 TECHNOLOGIES, L.L.C., a California limited  
15 liability company  
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**VERIFICATION**

*Edward Simon, DC v. Healthways, Inc., et al.*  
*Case No. LACV14-8022 BRO (JCx)*


I, Matthew Haddad, declare:

I am the Chief Executive Officer of Medversant Technologies, L.L.C., a defendant in the above-entitled matter, and I have been authorized to make this verification on its behalf.

I have read the foregoing **DEFENDANT MEDVERSANT TECHNOLOGIES, L.L.C.'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** and know the contents thereof. The response is based upon and made in reliance upon information and records maintained by Medversant Technologies, L.L.C.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California on the 22 day of December, 2014.

  
Matthew Haddad

**VERIFICATION**

DEFENDANT MEDVERSANT TECHNOLOGIES, L.L.C.'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES,  
CASE NO. LACV14-8022 BRO (JCX)

**PROOF OF SERVICE**

I am employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 11601 Wilshire Boulevard, Suite 1400, Los Angeles, California 90025-0509. On December 22, 2014, I served a copy of the within document(s): **DEFENDANT MEDVERSANT TECHNOLOGIES, L.L.C.'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES AND VERIFICATION**

☐

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

☐

by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☒

by placing the document(s) listed above in a sealed NORCO OVERNITE envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Norco Overnight agent for delivery.

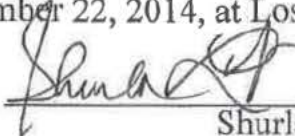
Scott Z. Zimmerman, Esq.  
Law Offices of Scott Z. Zimmerman  
601 South Figueroa Street, Suite 2610,  
Los Angeles, California 90017  
T: (213) 452-6509  
F: (213) 622-2171  
E: [szimm@zkcfc.com](mailto:szimm@zkcfc.com)  
*Attorneys for Plaintiff*

C. Darryl Cordero, Esq.  
Eric M. Kennedy, Esq.  
Payne & Fears LLP  
801 South Figueroa Street, Suite 1150  
Los Angeles, CA 90017  
T: (213) 439-9911  
F: (213) 439-9922  
E: [cdc@paynefears.com](mailto:cdc@paynefears.com)  
E: [emk@paynefears.com](mailto:emk@paynefears.com)  
*Attorneys for Plaintiff*

Stephen H. Turner  
Larissa G. Nefulda  
Lewis Brisbois Bisgaard & Smith LLP  
221 North Figueroa Street, Suite 1200  
Los Angeles, California 90012  
T: (213) 250-1800  
F: (213) 250-7900  
*Attorneys for Defendants*  
Healthways, Inc. and Healthways  
Wholehealth Networks, Inc.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 22, 2014, at Los Angeles, California.

  
Shurla L. Thomason



**EXHIBIT “E”**



21251 Ridgetop Circle, Ste 150  
Sterling VA 20166

Ed Simon Chiropractic  
Attn: Edward Simon DC  
6344 Laurel Canyon Blvd  
North Hollywood CA 91606

Dr. Simon,

Per your request please find your signed Healthways Participating Practitioner Agreement.  
If you have any questions, please contact Healthways customer service at (800) 274-7526.

Thanks,

Del Bryant  
Coordinator, Provider Services  
Healthways WholeHealth Networks Inc

AFF\_A' Updates

**HEALTHWAYS**

46040 Center Oak Plaza  
Suite 130, Sterling, VA 20166  
Fax: 703-430-9227  
Phone: 1-800-274-7526

**PARTICIPATING PRACTITIONER AGREEMENT  
CERTIFICATE OF PARTICIPATION FOR AFFINITY PROGRAMS**

**INSTRUCTIONS**

This form must be typed or printed legibly in blue or black ink. Below is a list of the items that must be submitted along with this application:

- ☐ Copy of license(s) if applicable
- ☐ Copy of insurance face sheet for professional and business liability policy
- ☐ Completed Published Fee Schedule form
- ☐ Signed release and attestation statement, with professional liability form if applicable.

Please return this application along with the necessary documentation to the address listed at the top of the page to the attention of the Credentialing Department.

**SIGNATURE LINE**

I, \_\_\_\_\_, ("PRACTITIONER"), hereby tender this Certificate of Participation in Healthways WholeHealth Networks, Inc ("HWHN") upon the terms and conditions set forth in this HWHN Participating Practitioner Agreement. With this Certificate, Practitioner agrees to serve as a Participating Practitioner member of HWHN for Affinity Programs, and hereby specifically authorizes and appoints HWHN to act on its behalf to contract for the provision of discounted cash services by Practitioner under HWHN Affinity Programs. I hereby attest to my meeting the network standards for my professional specialty and for my business operations as outlined in the Terms and Conditions, Participation Requirements, and Practitioner Credentials sections of this document, with respect to the following practice specialties:

**PRACTITIONER SPECIALTIES**

Please check all specialties for which you are applying for network participation. You must include all of the credentials for a specialty in order for it to be added to your profile. You must meet credentialing criteria for each specialty (please refer to THE Practitioner Specialty Specific Credentials Requirements section).

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Acupuncture                       | <input type="checkbox"/> Health and Wellness Coach                  | <input type="checkbox"/> Occupational Therapist                       |
| <input type="checkbox"/> Acupuncture, MD/DO                | <input type="checkbox"/> Hellerwork                                 | <input type="checkbox"/> Oriental Bodywork Therapist                  |
| <input type="checkbox"/> Acupuncture, DC/ND                | <input type="checkbox"/> Herbal Consultant                          | <input type="checkbox"/> Pain Practitioner                            |
| <input type="checkbox"/> Alexander Technique               | <input type="checkbox"/> Holistic Nurse Practitioner                | <input type="checkbox"/> Personal Trainer/Exercise Specialist         |
| <input type="checkbox"/> Ayurvedic Medicine                | <input type="checkbox"/> Integrative Holistic Physician (MD/DO)     | <input type="checkbox"/> Pilates Instructor                           |
| <input type="checkbox"/> Behavioral Health                 | <input type="checkbox"/> Homeopathy                                 | <input type="checkbox"/> Physical Therapy                             |
| <input type="checkbox"/> Biofeedback                       | <input type="checkbox"/> Hypnotist, non-clinical                    | <input type="checkbox"/> Post Birthing & Lactation Counselor          |
| <input type="checkbox"/> Chinese Herbal Medicine           | <input type="checkbox"/> Massage Therapy                            | <input type="checkbox"/> Qi Gong Instructor                           |
| <input checked="" type="checkbox"/> Chiropractic Physician | <input type="checkbox"/> Mind-Body Skills Instructor                | <input type="checkbox"/> Reflexologist                                |
| <input type="checkbox"/> Dietician - Registered/Licensed   | <input type="checkbox"/> Mindfulness-Based Stress Reduction Teacher | <input type="checkbox"/> Rolfer & Structural Integration Practitioner |
| <input type="checkbox"/> Doula                             | <input type="checkbox"/> Music Therapy                              | <input type="checkbox"/> Tai Chi Instructor                           |
| <input type="checkbox"/> Childbirth Educators              | <input type="checkbox"/> Naprapathy                                 | <input type="checkbox"/> Trager Practitioner                          |
| <input type="checkbox"/> Energy Healing Practitioner       | <input type="checkbox"/> Naturopathic Physician                     | <input type="checkbox"/> WholeHealth Advocate                         |
| <input type="checkbox"/> Feldenkrais                       | <input type="checkbox"/> Nutritional Counselor                      | <input type="checkbox"/> Yoga Instructor                              |
| <input type="checkbox"/> Guided Imagery/Hypnotherapy       |   |   |

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**DISCOUNT AGREEMENT**

I hereby agree to extend a 20 % (minimum of 10%-30%) discount from my usual service charges to all HWHN Affinity Program participants referred to me. If this left blank, Practitioner agrees to a 20% discount. I understand that, by agreeing to participate, HWHN will identify my practice in Group-specific online and offline directories to members seeking services under HWHN Affinity Group client contracts. I understand that certain HWHN Group clients may only accept affiliates who offer 20% or more discount levels to their beneficiaries. Practitioners listings in the online directories will be prioritized by discount level and include my name, specialty(s), discount level.

EDWARD SIMON  
Practitioner's Printed Name

[Signature]  
Practitioner's Signature

4/8/08  
Date

**Primary Location:**

Clinic Name: ED SIMON CHIROPRACTIC

Address: 6344 LAUREL CANYON BLVD

City, State, Zip: NORTH HOLLYWOOD, CA 91606-3213

Phone: 8187611355

Office Fax: 8187618705

Office Contact: \_\_\_\_\_

Title: \_\_\_\_\_

**Secondary Location:**

Clinic Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Office Fax: \_\_\_\_\_

Office Contact: \_\_\_\_\_

Title: \_\_\_\_\_

Website Address: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Do you wish to have your Website listed on your profile? Yes

www.edsimonchiropractic.com

What is your first year of practice? 1981

What non-English languages do you or your office staff speak fluently? Please list Spanish

**Practice Focus:**

Gentle, effective and affordable treatment of headache, neck and back pain, stress and sports injury.

**Payment Methods Accepted:**

- ☒ Visa  
☒ MasterCard  
☐ American Express

- ☒ Discover  
☒ Cash  
☒ Personal Check

Average Fee Range: \$      - \$     

**Special Offers:**

No obligation examination and consultation

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PRIMARY LOCATION OFFICE HOURS					
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
8 AM 6 PM	8 AM 6 PM	8 AM 6 PM	8 AM 6 PM	8 AM 6 PM	AM PM

SECONDARY LOCATION OFFICE HOURS					
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
AM PM	AM PM	AM PM	AM PM	AM PM	AM PM

#### DEFINITIONS

1. **Affinity Program** means a discount cash payment arrangement where the Practitioner agrees to provide Participants in HWHN-contracted Affinity programs access to practitioner's services at a specific discount % off the practice's Published Fee Schedule. Practitioner has specified a discount within the range of 10% to 30+%, on services not covered by any health insurance or governmental program. Discount does not apply to co-payments or deductibles for covered services. This discount is to be offered to all Participants in all HWHN contracted Group Affinity programs, for which HWHN provides notice to Practitioner. Participants simply show the Practitioner their Group ID card or HWHN discount card to receive the discount. Payment for services, after the discount, is the complete responsibility of the Participant. (Discount must be applied to personal health services and therapies delivered by Practitioner's office, and may extend, at the Practitioner's discretion, to dispense health related supplies and durable medical goods).
2. **Published Fee Schedule** means the current retail or non-discounted fee schedule that applies to the Practitioner's services to the general public and to the fees for service charged to patients when Practitioner is a non-participating provider in the patient's insurance plan.
3. **Unrestricted License** means that the practitioner's healthcare license, registration, or certification is valid for full practice within the jurisdiction's regulated scope of practice for that health care professional specialty, and is not subject to stipulations, practice limitations, probationary periods, temporary supervision requirements, or other limitations. Limitations include peer review actions and malpractice claims settled or pending.

#### TERMS AND CONDITIONS OF PARTICIPATION

1. Practitioner agrees to cooperate with HWHN's Quality Management programs. The Quality/Utilization Management (Q/UM) committee is responsible for evaluating a practitioner's professional performance record while participating in the network. It may review fees, quality of care, and administrative complaints and/or audit the services of Practitioners under this Agreement. It may impose sanctions and determine if the applicant's practice meets network standards for ongoing membership and participation in HWHN programs. HWHN, in accordance with health care industry guidelines, maintains a grievance and appeal process for decisions adversely affecting Practitioners eligibility for participation in Group plans.
2. Practitioner represents and warrants that the information provided to HWHN, including, but not limited to the information attested to in each Practitioner's application, practice profile updates, and credentials updates, is true, complete, and current.
3. Failure to honor the contracted discounts, or inconsistent application of the Published Fee Schedules, or failure to inform HWHN of changes-in-practice status will be considered a material breach of this agreement. HWHN will accept changes in the Published Fee Schedules every six months. Failure to comply with Quality Management investigations, and/or submission of false information, is grounds for termination.
4. HWHN agrees to indemnify, defend, and hold the Practitioner harmless from and against any and all claims, losses, costs, damages, expenses of every kind and character and liabilities, including attorney's fees and costs, (hereinafter "claims" or "claim") incurred in connection with such claims, including any action or proceeding brought thereon, arising from or as a result of any accident, injury, loss or damage whatsoever caused to any person or to the property of any person arising out of or in connection with this Agreement caused by the negligence or misconduct of HWHN or its agents, contractors, servants or employees of HWHN excepting; however, in each case, claims caused by the negligence or misconduct of Practitioner or its agents, contractors, servants or employees of Practitioner. Practitioner agrees to defend, indemnify and hold HWHN and contracting Groups harmless from and against any and all claims, losses, costs, damages, expenses of every kind and character and liabilities, including attorney's fees and cost, (hereinafter "claims" or "claim") incurred in connection with such claims, including any action or proceeding brought thereon, arising from or as a result of any accident, injury, loss or damage whatsoever caused to any person or to the property of any person arising out of or in connection with this Agreement caused by the negligence or misconduct of Practitioner or its agents, contractors, servants or employees of Practitioner excepting; however, in each case, claims caused by the negligence or misconduct of Group/HWHN or its agents, contractors, servants, or employees of Group/HWHN.

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### PARTICIPATION REQUIREMENTS

**Liability/Insurance:** All Practitioners with health care licenses and Practitioners with specified unlicensed hands-on specialties (see specialty list) agree to maintain professional liability insurance. Per the current HWHN policy for CAM practitioners, a minimum of \$200,000 per occurrence and \$500,000 aggregate is required while limits of 1M/3M are required for all MD's and DO's, as well as ND's and DC's who also are credentialed for acupuncture. (Members who participate in certain regional contracts involving both covered benefits and affinity programs may be required to have higher limits.) Practitioner agrees to maintain required premises and comprehensive general liability insurance in amounts of \$100,000 per claim and \$100,000 per year, or the minimum required by state law, whichever is greater. Furthermore, the Practitioner agrees to obtain extended liability insurance (sometimes called "nose" or "tail" policies), to insure retroactive coverage for professional acts performed during the term of this agreement, should the Practitioner terminate this agreement and change or terminate professional malpractice coverage.

**Practice Experience:** All practitioners are required to have 12 months experience in the credentialed practice specialty.

**Patient Services:** Practitioners must speak fluent English or have access to an interpreter.

**Health Information Privacy Regulatory Compliance and Business Associate Agreement:**

Practitioner agrees that practitioner's practice will remain compliant with applicable state and federal regulations regarding privacy and confidentiality of individually identifiable health information.

HWHN agrees to adhere to applicable state and federal privacy regulations with respect to Protected Health Information, as defined under the Health Insurance Portability and Accountability Act of 1996, received from Practitioner's practice.

**Premises Standards:** Health care office locations must follow OSHA safety standards, and home offices must have separate treatment room or studio and professional signage as allowed by local zoning.

**Practitioner Licensure Requirements:**

- Practitioners must give evidence of current unrestricted license in the specialty(ies). With some practitioner types; HWHN has established additional criteria, such as dual credentialing in both a licensed field as well as by meeting certification standards for the unlicensed practice specialty.
- Acceptance of practitioner types who meet HWHN credentialing criteria for training and certification is also subject to state-by-state application of network business criteria established by HWHN and their network clients.

### NETWORK CERTIFICATION AND RELEASE OF INFORMATION

#### **QUERIES TO THE NATIONAL PRACTITIONER DATA BANK OR STATE LICENSING BOARD**

State and federal licensing and regulatory boards will be queried if you apply. If your application is rejected for reasons relating to professional conduct or professional competence, which reasons include misrepresenting, misstating or omitting a relevant fact in connection with your application, the rejection may be reported to the National Practitioner Data Bank.

#### **RIGHT TO CORRECT ERRONEOUS INFORMATION**

Practitioner has the right to review information submitted in support of your Network Application and contract to the extent permitted by law and HWHN will notify you of any information obtained during the review that differs substantially from the information you provide. You will then have the right to correct any erroneous information from HWHN.

#### **CERTIFICATION OF APPLICATION HEALTH CARE LICENSE AND MALPRACTICE CLAIM STATUS**

- I certify all statements in this application are correct and I agree with the terms of this agreement with HWHN.
- I certify that I have and will maintain during the course of my contractual relationship with HWHN the unrestricted healthcare license(s) required for my specialties as a HWHN network practitioner. Unrestricted license means that the practitioner's healthcare license is valid for full practice within the jurisdiction's regulated scope of practice for that health care professional specialty, and not subject to stipulations, practice limitations, probationary periods, temporary supervision requirements, or other limitations. I will notify HWHN if my license status changes.
- If there are national standards and/or state licensure standards for a practitioner type that is not licensed, registered, or certified by the applicable state jurisdiction, HWHN has recognized certain national standards applicable for its network. I certify that I meet these standards for training, experience, and examination, as summarized in this application, in the absence of local licensure, or in addition to any existing lesser local requirements. I recognize that HWHN standards do not substitute for my meeting such state licensure requirements for health care practice as may periodically be instituted or updated by state jurisdictions.
- I have \_\_, have not \_\_ had any malpractice claims or award involvement. If you have past or current claims, please fill out the attached professional liability explanation form.

**AUTHORIZATION FOR RELEASE OF INFORMATION**

I authorize HWHN to consult with past employers, administrators and members of institutions with which I have been or am currently associated, and with others who may have information bearing on my qualifications as a Practitioner, including past and present malpractice carriers to obtain and verify my credentials and professional competence. I further consent to the inspection by representatives of HWHN of all documents that may be material to an evaluation of my professional competence, character and ethical qualifications including information relating to any disciplinary action, suspension, or curtailment of medical-surgical privileges. I consent to the release and exchange of information relating to any disciplinary action, suspension, or curtailment of medical-surgical privileges to HWHN. I authorize the medical and/or professional associations of which I am a member to turn over to the representatives of HWHN a copy of my application for membership and related documents.

I release from liability all representatives of HWHN for their acts performed in good faith and without malice in connection with evaluating my application and my credentials and qualifications, and I release from any liability any and all individuals and organizations that provide information to HWHN in good faith and without malice concerning my professional competence, character and ethics.

Signature: [Signature] Date: 4/8/08  
Practitioner Name: Ed Simon, DC. Title or Designation (DC, LAc, GCFP, etc): DC

A photocopy of this document shall be as effective as the original when so presented. (Signature stamps are not acceptable).

**PROFESSIONAL LIABILITY INFORMATION FORM**

Please complete this form explaining any professional liability claims or lawsuits brought against you, settled, or dismissed. The information provided should include pending and closed cases, as well as dismissed or dropped claims or suits. Please obtain information from your insurer if necessary. Copy this form if you have more than one claim to report.

Practitioner Name: NA Case Number: \_\_\_\_\_

**Current status of legal action:**

☐ Pending  
☐ Dismissed or Dropped  
☐ Closed  
Court Date (if available): \_\_\_\_\_  
Date: \_\_\_\_\_  
Date: \_\_\_\_\_

**Resolution:**

☐ No Payments  
☐ Out of Court Settlement  
☐ Judgment or Award  
Amount \$ \_\_\_\_\_  
Amount \$ \_\_\_\_\_

Date of Filing: \_\_\_\_\_

Date of Incident: \_\_\_\_\_

Professional Liability Insurer: \_\_\_\_\_

Allegation: \_\_\_\_\_

Details of incident including your role, relating events, and patient outcome:

Have you made any changes in your practice as a result of this incident?  
Attach separate sheet if required.

I certify to the best of my knowledge that all information provided above is correct and complete. I understand that any significant misstatement or omissions on this application may constitute cause for denial or revocation of my contract.

Signature: [Signature] Date: 4/8/08

Updated: 01/09/08

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### Published Fee Schedule Reporting Form

Published Fee Schedule means the non-discounted fee schedule that applies to the Practitioner's services to the general public. Typical fees include initial contact session, revisit session, common treatment procedures, and group or individual educational class fees. Please indicate your current Published (prevailing or usual, customary and reasonable) Fees charged for your 5-10 most frequent services. Healthcare practitioners should consult the AMA reference materials for proper use of CPT codes. If one or more of your most frequently charged items is not listed, indicate them in the blank spaces provided. Circle the code or item number on the left of the columns for items that apply to your practice and report those fees. Non-licensed educators, trainers and counselors should indicate their fees for individual and group sessions and for group classes, programs and workshops. Please use whole numbers only (e.g., report \$10.00 as \$10; report \$10.25 as \$10; report \$10.75 as \$11).

Print your Name Ed Simon Zip Code 91606 Sign your Name [Signature] Date 4/18/08

☐ Check here if you are submitting a copy of your office Fee slip with the 5-10 most frequently used charges highlighted; sign above and attach your form to this one.

No.	CPT	Description	Fee
<b>New Patient Services</b>			
1	99201	Problem focused, (typically 10 min.)	\$
2	99202	Expanded problem, (typically 20 min.)	\$
3	99203	Detailed Hx & PE (typically 30 min)	\$
4	99204	Comprehensive, Mod Complex (45min)	\$
5	99205	Comprehensive, High Complexity	\$
<b>Established Patient Services</b>			
6	99211	Minimal, (typically 5 minutes)	\$
7	99212	Problem focused, (typically 10 min.)	\$
8	99213	Expanded problem, (typically 15 min.)	\$
9	99214	Detailed, (typically 25 min.)	\$
10	99215	Comprehensive, (typically 40 min.)	\$
<b>Consultation Services for Established Patients</b>			
11	99273	Confirmatory Consult, Detailed Hx & PE, low complexity (typical 40 min.)	\$
12	99274	Confirmatory Consult, Comprehensive mod. complexity, (typically 60min.)	\$
13	99386	Preventive Med. Eval, Comp. Review and counseling, New Pt. Age 40-64	\$
14	90806	Office Psychotherapy, 45-50 min.	\$
15	90876	Office psychotherapy w/ Biofeedback	\$
16	90901	Biofeedback training, any modality	\$
<b>Traditional Health Systems and Modalities Evaluations</b>			
17	No code	Trad. Chinese Medicine Evaluation	\$
18	No code	Homeopathic Medicine Evaluation	\$
19	No code	Ayurvedic Medicine Evaluation	\$
<b>Physical Medicine Evaluations</b>			
20	97001	Physical therapy initial evaluation	\$
21	97002	Physical therapy re-evaluation	\$
22	97003	Occupational therapy initial eval.	\$
23	97005	Athletic Training initial evaluation	\$
24	97799a	Acupuncture initial evaluation	\$
25	97799b	Acupuncture reevaluation	\$
<b>Other Frequently Used Evaluation or Treatment Charges</b>			
			\$
			\$
			\$
			\$
<b>Add Comments or Explanations</b>			

No.	CPT	Description	Fee
<b>Chiropractic Manipulative Treatment</b>			
26	98940	CMT, spinal, 1 to 2 regions	\$
27	98941	CMT, spinal, 3 to 4 regions	\$
28	98942	CMT, spinal, 5 regions	\$
29	98943	CMT, extra spinal, 1 or more regions	\$
<b>Therapeutic Procedures, one or more areas, each 15 minutes</b>			
<i>Note your typical session length: _____ min.</i>			
30	97110	Therapeutic exercises	\$
31	97112	Neuromuscular reeducation	\$
32	97116	Gait training	\$
33	97124	Massage	\$
34	97139	Unlisted procedure, ea. 15 min.	\$
35	97140	Manual therapy, one or more regions	\$
36	97530	Therapeutic activities to improve performance, each 15 minutes	\$
37	97532	Training to Develop cognitive skills	\$
38	97533	Sensory integrative techniques	\$
39	97535	A.D.L. / Self care/home management	\$
<b>Acupuncture Procedures</b>			
40	97810	Acupuncture, one or more needles, initial 15 min, without electrical stimulation	\$
41	97811	Acupuncture, one or more needles, ea. add'l. 15 min without electrical stimulation	\$
42	97813	Acupuncture, one or more needles, initial 15 min, with electrical stimulation	\$
43	97814	Acupuncture, one or more needles, ea. add'l. 15 min with electrical stimulation	\$
44	97802	Nutrition Therapy, initial, ea. 15min.	\$
45	20552	Trigger point Injection, 1-2 muscle grps.	\$
<b>Osteopathic Manipulative Treatment</b>			
46	98925	OMT, 1 to 2 body regions involved	\$
47	98926	OMT, 3 to 4 body regions involved	\$
48	98927	OMT, 5 to 6 body regions involved	\$
49	98928	OMT, 7 to 8 body regions involved	\$
50	98929	OMT, 9 to 10 body regions involved	\$
<b>Educational, Wellness and Preventive Services</b>			
<i>Note: Needles, training &amp; Counseling</i>			
51		Individual Training /Counseling Session	\$
52		Series/Package of Individual Sessions	\$
53		Group Class, Single Session	\$
54		Group Class, Multi part Workshop	\$
55		Group Class Series or Package of Group Sessions	\$



**PRACTITIONER SPECIALTY SPECIFIC CREDENTIALS REQUIREMENTS**

*Please check the information that applies to your specialty(ies). You will be listed in the directories by these categories.*

<b>Acupuncture:</b>	<input type="checkbox"/> Graduation from a formal full-time acupuncture program meeting NCCAOM requirements. <input type="checkbox"/> Held a valid unrestricted state license and/or National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) certification. OR <input type="checkbox"/> Physician Acupuncturists (MD/DO) must hold a valid unrestricted license to practice medicine including acupuncture, and either be a practicing member of the Am. Academy of Medical Acupuncture (AAMA), or be certified by the Am. Board of Medical Acupuncture. <input type="checkbox"/> NDs and DCs need to have 200 hours of acupuncture training and meet ND or DC state scope of practice criteria. <input type="checkbox"/> Professional liability insurance limits of 1M/3M are required for all MD's and DO's as well as ND's and DC's who practice acupuncture OR liability insurance limits of at least \$200,000 / \$500,000 for licensed acupuncturists only.
<b>Alexander Technique:</b>	<input type="checkbox"/> Certified by the American Society of Alexander Technique (AmSAT) or by Alexander Technique International (ATI). <input type="checkbox"/> Professional liability insurance limits of at least \$200,000 / \$500,000.
<b>Ayurvedic:</b>	<input type="checkbox"/> Credentialed with Healthways WholeHealth Networks, Inc. in another licensed specialty. <input type="checkbox"/> Written documentation of 200 hours of training. <input type="checkbox"/> Three letters of reference, preferably one from the program instructor.
<b>Behavioral Health:</b>	<input type="checkbox"/> Masters degree or higher in a behavior health discipline, i.e. Psychologist, Social Worker etc. <input type="checkbox"/> Hold a valid unrestricted state license. <input type="checkbox"/> Professional liability insurance limits of at least \$200,000 / \$500,000.
<b>Biofeedback:</b>	<input type="checkbox"/> Certification from the Biofeedback Certification Institute of America (BCIA). <input type="checkbox"/> Professional liability insurance limits of at least \$200,000 / \$500,000.
<b>Childbirth Educator:</b>	Applicants may qualify as a Childbirth Educator, with documented training and certification under the auspices of <input type="checkbox"/> International Childbirth Education Association (ICEA) OR <input type="checkbox"/> Childbirth and Postpartum Professional Association (CAPPA) OR <input type="checkbox"/> American Academy of Husband Coached Childbirth (AAHCC - Bradley @ Method) OR <input type="checkbox"/> ASPO/Lamaze - Lamaze Certified Childbirth Educator OR <input type="checkbox"/> Association of Labor Assistants and Childbirth Educators (ALACE)
<b>Chinese Herbal Medicine:</b>	<input type="checkbox"/> National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) Herbal Practitioner certification, or state license exam for TCM herbs. <input type="checkbox"/> Credentialed as a licensed acupuncturist or other licensed profession. <input type="checkbox"/> Professional liability insurance limits of at least \$200,000 / \$500,000
<b>Chiropractic:</b>	<input checked="" type="checkbox"/> Graduation from an accredited college or formal training program. <input checked="" type="checkbox"/> Hold a valid unrestricted state license. <input checked="" type="checkbox"/> Professional liability insurance limits of at least \$200,000 / \$500,000.
<b>Dietician Registered/Licensed:</b>	<input type="checkbox"/> Hold a valid unrestricted state license and/or American Dietetic Association/Commission on Dietetic Registration (ADA/CDR) accreditation. <input type="checkbox"/> Professional liability insurance limits of at least \$200,000 / \$500,000
<b>Doulas:</b>	Applicants may qualify as a Doula, with documented training and certification as a prenatal, labor/birth, or postpartum doula under the auspices of <input type="checkbox"/> Doulas of North America (DONA) OR <input type="checkbox"/> Childbirth and Postpartum Professional Association (CAPPA) OR <input type="checkbox"/> National Association of Postpartum Care Services OR <input type="checkbox"/> Association of Labor Assistants and Childbirth Educators (ALACE) PLUS <input type="checkbox"/> Current professional liability insurance policy of 200,000 / 500,000 minimum.
<b>Energy Healing Practitioner:</b>	<input type="checkbox"/> Reiki: Credentialed with HWHN in another licensed specialty AND <input type="checkbox"/> Professional liability insurance limits of at least \$200,000 / \$500,000. <input type="checkbox"/> Reiki: Certified as a Third Degree Reiki (Reiki Master) or as a Reiki Master Teacher, with three letters of reference OR <input type="checkbox"/> Healing Touch: Certified as a practitioner or teacher by Healing Touch International.
<b>Feldenkrais:</b>	<input type="checkbox"/> Guild Certified Feldenkrais Practitioner or Teacher certificate from the Feldenkrais Guild of North America. <input type="checkbox"/> Professional liability insurance limits of at least \$200,000 / \$500,000
<b>Guided Imagery:</b>	<input type="checkbox"/> Meet HWHN credentialing criteria in Behavioral Health. <input type="checkbox"/> Documented training in clinical Guided Imagery or Hypnotherapy. <input type="checkbox"/> Professional liability insurance limits of at least \$200,000 / \$500,000.
<b>Health and Wellness Coach:</b>	<input type="checkbox"/> Certification by a professional certifying or trade organization with standards of practice, and a code of ethics acceptable to the Credentialing Committee OR <input type="checkbox"/> Graduation from an accredited post-secondary education program with a degree in coaching/lifestyle education field OR <input type="checkbox"/> Completion of a post professional continuing education program in health education and coaching acceptable to the Credentialing Committee PLUS <input type="checkbox"/> Current, valid, unrestricted license/registration for coaching services if required by the state in which he/she will participate.
<b>Hellerwork Practitioner:</b>	<input type="checkbox"/> Certified by Hellerwork International as a Certified Hellerwork Practitioner. <input type="checkbox"/> Professional liability insurance of at least \$200,000 / \$500,000.



<b>Herbal Consultant:</b>	<input type="checkbox"/> Full member of the American Herbalists Guild and a minimum of 200 hours education in herbal medicine. <input type="checkbox"/> Three letters of reference, preferably one from the program instructor.
<b>Holistic Nurse Practitioner:</b>	<input type="checkbox"/> Hold a valid unrestricted state license as an advanced nurse or nurse practitioner. <input type="checkbox"/> 200 or more hours course work in alternative medicine or another credentialed CAM specialty. <input type="checkbox"/> Professional liability insurance of at least \$200,000/\$500,000.
<b>Homeopath:</b>	<input type="checkbox"/> Certified in Classical Homeopathy by the Council for Homeopathic Certification OR <input type="checkbox"/> A licensed independent prescribing health practitioner (DC, ND, MD, DO, NP, etc) otherwise credentialed by examination with a recognized state, national or international certificate of primary care or specialty care homeopathic expertise. <input type="checkbox"/> Business or professional liability insurance of at least \$200,000 / \$500,000 or \$1M/ \$3M based on license level.
<b>Hypnotist (non clinical):</b>	<input type="checkbox"/> Active Certified members of the National Guild of Hypnotists, Inc. <input type="checkbox"/> Professional liability insurance limits of at least \$200,000 / \$500,000.
<b>Integrative Holistic Physician:</b>	<input type="checkbox"/> A minimum of 200 hours of documented course work in integrative medicine or osteopathic principles, or be certified by the American Board of Holistic Medicine. <input type="checkbox"/> Hold a valid unrestricted state license to practice medicine. <input type="checkbox"/> Professional liability insurance of \$1,000,000 / \$3,000,000.
<b>Massage Therapy:</b>	<input checked="" type="checkbox"/> Hold a valid unrestricted state massage license. <input checked="" type="checkbox"/> Current jurisdictional (city/county, etc.) license PLUS either of the following: <input checked="" type="checkbox"/> Certificate of NCBTMB exam passage (National Certification Board of Therapeutic Massage & Bodywork OR <input checked="" type="checkbox"/> Certificate of active professional AMTA or ABMP membership (requires 500 hrs training) OR <input checked="" type="checkbox"/> Meet WHN qualifications for alternative bodywork training and certification (Rolfing, Myotherapy, Reiki, Hellerwork, Oriental Body Work, etc.). <input checked="" type="checkbox"/> Professional liability insurance of at least \$200,000 / \$500,000.
<b>Mind-Body Skills Instructor:</b>	<input type="checkbox"/> Certification by Peggy Huddleston of satisfactory completion of training in administering the "Prepare for Surgery, Heal Faster" workshop program OR <input type="checkbox"/> Written Documentation of completion of training as a meditation instructor in a formal or apprenticeship training program PLUS <input type="checkbox"/> Attestation of a minimum of 200 hours of training and/or practice teaching PLUS <input type="checkbox"/> Three letters of reference, one of which is from the program instructor OR <input type="checkbox"/> Written documentation of completion of training in the MindBodySpiral Professional Training Program, offered by the Center for Mind-Body Medicine in Washington D.C. OR <input type="checkbox"/> Documentation of status as a Certified Middendorf Practitioner by completion of the three year (three block) professional training offered by Middendorf Breath Institute in Berkeley California.
<b>Mindfulness Based Stress Reduction Teachers:</b>	<input type="checkbox"/> MBSR Teacher Certification evidenced by a Certification by the Center for Mindfulness at the University of Massachusetts OR <input type="checkbox"/> Copy of Attestation to 200 hours of experience teaching Mindfulness-Based Stress Reduction (MBSR) PLUS <input type="checkbox"/> Written Documentation of completion of Mindfulness-Based Stress Reduction in Mind/Body Medicine: A 5- or 7-Day Residential Training Retreat offered by the Center for Mindfulness at University of Massachusetts Medical School OR <input type="checkbox"/> Written Documentation of completion of Practicum in MBSR (formerly the Internship Program) and/or Teacher Development Intensive in MBSR and/or Supervision in MBSR conducted by CFM or a CFM affiliated training program PLUS <input type="checkbox"/> Letter of Reference from an MBSR Instructor-trainer approved by the Center for Mindfulness (contact CFM or HWHN for list of approved professionals) AND <input type="checkbox"/> Two Additional Professional or Client Letters of Reference (if holding a professional health care license, meet HWHN criteria for the licensed specialty)
<b>Music Therapy:</b>	<input type="checkbox"/> A listing of current certification as MT-BC by the Certification Board for Music Therapists (CBMT) OR <input type="checkbox"/> A listing as a Registered Music Therapist (RMT), Certified Music Therapist (CMT) or Advanced Certified Music Therapist (ACMT), as listed with the National Music Therapy Registry PLUS <input type="checkbox"/> Current membership in the American Music Therapy Association (AMTA) OR A listing of current certification as MT-BC by the Certification Board for Music Therapists (CBMT) OR <input type="checkbox"/> A listing of current certification as MT-BC by the Certification Board For Music Therapists. <input type="checkbox"/> Licensed by the State of practice where required.
<b>Naprapthy:</b>	<input type="checkbox"/> Graduate of the Chicago National College of Naprapthy or the Swedish College of Naprapthy. Professional liability insurance of at least \$200,000 / \$500,000. <input type="checkbox"/> Hold a valid unrestricted state license for naprapthy or manual therapy in your state. <input type="checkbox"/> Professional liability insurance of at least \$200,000 / \$500,000.
<b>Naturopathic Physician:</b>	<input type="checkbox"/> Graduation from a naturopathic medical college with a four-year graduate degree. <input type="checkbox"/> Hold a valid unrestricted state license. If licensure is not available by the state the practitioner must pass the Naturopathic Physicians License Exam (NPLEX) and have a valid out-of-state ND license. <input type="checkbox"/> Professional liability insurance of at least \$200,000 / \$500,000.
<b>Nutritional Counselor:</b>	<input type="checkbox"/> Hold a valid unrestricted state license as a nutritionist OR (if non-licensed state) <input type="checkbox"/> Certified as a Certified Clinical Nutritionist (CCN) by the Clinical Nutrition Certification Board OR <input type="checkbox"/> Certified as a Certified Nutritionist (CN) by the National Institute of Nutritional Education. <input type="checkbox"/> Professional liability insurance limits of at least \$200,000 / \$500,000.
<b>Occupational Therapist:</b>	<input type="checkbox"/> Graduation from an accredited college or formal training program. <input type="checkbox"/> Business or Professional liability insurance limits of at least \$200,000 / \$500,000. <input type="checkbox"/> Hold a valid unrestricted state license. <input type="checkbox"/> Professional liability insurance limits of at least \$200,000 / \$500,000. Graduation from an accredited college or formal training program



<b>Oriental Bodywork:</b>	<input type="checkbox"/> Hold a valid unrestricted state or local license PLUS <input type="checkbox"/> Written documentation of Massage training program, including Oriental body work, of 500 class hours and a National Certification Board for Therapeutic Massage and Bodywork (NCBTMB) certification OR <input type="checkbox"/> Certification in Asian Bodywork Therapy by the Nat. Certification Commission for Acupuncture and Oriental Med. (NCCAOM). <input type="checkbox"/> Professional liability insurance of at least \$200,000 / \$500,000
<b>Pain Practitioner:</b>	<input type="checkbox"/> Hold a current, valid, unrestricted license/registration as a health care practitioner (MD, DO, DC, PT, and ND, LAc, Nurse practitioner or behavioral health) in the state in which he/she will participate. <input type="checkbox"/> Graduation from an accredited college or formal training program for the primary license recognized by the state licensing agency. <input type="checkbox"/> Current professional liability insurance policy meeting primary specialty requirements, or at least \$200,000 / \$500,000. <input type="checkbox"/> Certification as a Diplomat, Fellow or Clinical Associate in Pain Mgmt by credentialing exam of American Academy of Pain Mgmt OR <input type="checkbox"/> Certified by the American Board of Pain Medicine OR <input type="checkbox"/> Certified by the subspecialty examination in Pain Medicine by the boards for Anesthesiology, Physical Medicine and Rehabilitation, or Psychiatry and Neurology.
<b>Personal Trainer/Exercise Specialist:</b>	<input type="checkbox"/> Certification from the American College of Sports Medicine (ACSM), the American Council on Exercise (ACE), the National Strength and Conditioning Association (NSCA), National Academy of Sports Medicine (NASM), International Sports Sciences Association (ISSA), or the International Weightlifting Association (IWA), the Aerobics and Fitness Association of America (AFAA) or an equivalent program sponsored by an accredited institution of post secondary education OR <input type="checkbox"/> Hold a Master's Degree in Exercise Physiology from a recognized US or Canadian institution OR <input type="checkbox"/> Hold an Undergraduate Degree in physical education, exercise science, health science or nutrition, with additional training in physical therapy and Kinesiology, and a certification from one of the following: <input type="checkbox"/> The Center for Exercise Physiology (CEP) OR Registered Clinical Exercise Physiologist by the American College of Sports Medicine <input type="checkbox"/> Health Fitness Director or Program Director certification by the American College of Sports Medicine <input type="checkbox"/> Certified by the Health & Fitness Program of certification by the Canadian Society for Exercise Physiology (CSEP) PLUS <input type="checkbox"/> Evidence of at least 15 CEBU's of continuing education in exercise and fitness specialties every two years
<b>Physical Therapist:</b>	<input type="checkbox"/> Graduation from an accredited college or formal training program. <input type="checkbox"/> Business or Professional liability insurance limits of at least \$200,000 / \$500,000. <input type="checkbox"/> Hold a valid unrestricted state license. <input type="checkbox"/> Professional liability insurance limits of at least \$200,000 / \$500,000 Graduation from an accredited college or formal training program
<b>Pilates Instructor:</b>	<input type="checkbox"/> Registered Pilates Instructor member of the Pilates Method Alliance (PMA) OR <input type="checkbox"/> Letter attesting current employment at Studio or Educational Organization that is registered with PMA OR <input type="checkbox"/> Evidence of Training through or by a Pilates Instructor program recognized by the Pilates Method Alliance OR <input type="checkbox"/> Certificate of completion in a comprehensive Pilate's teacher training course with a 400 hour minimum requirement. <input type="checkbox"/> Business or Professional liability insurance limits of at least \$200,000 / \$500,000.
<b>Post Birthing Lactation Counselor:</b>	<input type="checkbox"/> Documented training and certification under the auspices of the International Childbirth Education Association (ICEA) OR <input type="checkbox"/> Childbirth and Postpartum Professional Association (CAPPA) OR <input type="checkbox"/> La Leche League International accredited Leader program OR <input type="checkbox"/> International Board of Lactation Consultant Examiners (IBLCE)
<b>Qi Gong:</b>	<input type="checkbox"/> Certification from the individual training program. <input type="checkbox"/> A minimum of 200 hours of training and/or practice teaching. <input type="checkbox"/> One year teaching experience.
<b>Reflexologist:</b>	<input type="checkbox"/> Credentialed with HWHN as a massage therapist. <input type="checkbox"/> Certification from the American Reflexology Certification Board. <input type="checkbox"/> Professional liability insurance limits of at least \$200,000 / \$500,000.
<b>Rolfier/Structural Integration:</b>	<input type="checkbox"/> Documented training and certification under the auspices of either certification from the Rolf Institute as a Certified Rolfier or Advanced Certified Rolfier, and an additional 400 class hours after certification OR <input type="checkbox"/> Meeting the current membership and certification standards of the International Association of Structural Integrators AND <input type="checkbox"/> Professional liability insurance in the amounts determined by the Operational Quality Committee
<b>Tai Chi:</b>	<input type="checkbox"/> Certification from the individual training program. <input type="checkbox"/> A minimum of 200 hours of training and/or practice teaching. <input type="checkbox"/> One year teaching experience.
<b>Trager Practitioner:</b>	<input type="checkbox"/> Credentialed with HWHN as a licensed health care practitioner. <input type="checkbox"/> Certified with the Trager Institute as a Trager Practitioner. <input type="checkbox"/> Professional liability insurance of at least \$200,000 / \$500,000.
<b>WholeHealth Advocate:</b>	<input type="checkbox"/> Certification by a National Institute of WholeHealth as a WholeHealth Educator OR <input type="checkbox"/> Completion of the WholeHealth Advocate Training Program of 186 CEBU's offered to HWHN network members by the National Institute of WholeHealth OR <input type="checkbox"/> Evidence of completion of other comparable post professional or post degree continuing education programs acceptable to the Operational Quality Committee PLUS <input type="checkbox"/> Two years of experience as a professional health care practitioner or a health and wellness coach <input type="checkbox"/> Current, valid, unrestricted license/registration in the related health care profession, if applicable, and any coaching or lifestyle counseling registrations or certifications required by the state in which he/she will participate.
<b>Yoga:</b>	<input type="checkbox"/> A Registered Yoga Teacher, registered with Yoga Alliance (YA) OR <input type="checkbox"/> Evidence of Training through or by a Yoga Alliance Registered School OR <input type="checkbox"/> Certificate of completion of an unregistered comprehensive Yoga Teacher course that meets the Yoga Alliance standards PLUS <input type="checkbox"/> One year in practice experience since completion of training or currently working under supervision of a Yoga Teacher registered with Yoga Alliance.

### Therapies and Techniques: Please check all that apply

These Therapies and Techniques will be listed on your profile.

<input checked="" type="checkbox"/> Acupressure	<input type="checkbox"/> Energy Healing	<input type="checkbox"/> Moxabustion
<input type="checkbox"/> Acupuncture	<input type="checkbox"/> Energy Healing-Healing Touch	<input type="checkbox"/> Music therapy
<input type="checkbox"/> Acupuncture-Ear/Auricular	<input type="checkbox"/> Energy Healing-Reiki	<input type="checkbox"/> Myotherapy
<input checked="" type="checkbox"/> Acute injuries-auto/work	<input type="checkbox"/> Environmental Medicine	<input type="checkbox"/> NAET
<input type="checkbox"/> Addiction/Substance Abuse Treatment	<input checked="" type="checkbox"/> Exercise-Clinical	<input type="checkbox"/> Naturopathic Medicine
<input type="checkbox"/> Alexander Technique	<input checked="" type="checkbox"/> Exercise-Fitness	<input type="checkbox"/> Nutrient Injection Therapy
<input type="checkbox"/> Anti-Aging/Longevity Therapies	<input type="checkbox"/> Exercise-Performance training	<input type="checkbox"/> Nutrition-Clinical
<input checked="" type="checkbox"/> Applied kinesiology	<input type="checkbox"/> Face Pain Therapy	<input type="checkbox"/> Nutrition-Preventive
<input type="checkbox"/> Aquatic Therapy	<input type="checkbox"/> Feldenkrais for groups	<input type="checkbox"/> Nutrition-Sports
<input type="checkbox"/> Aromatherapy	<input type="checkbox"/> Feldenkrais for individuals	<input type="checkbox"/> Occupational Therapy
<input type="checkbox"/> Art therapy	<input type="checkbox"/> Flower essences	<input type="checkbox"/> Orthomolecular medicine
<input type="checkbox"/> Asian/Oriental Body Work	<input type="checkbox"/> Food Allergy Management	<input type="checkbox"/> Orthotics
<input type="checkbox"/> Ayurvedic Medicine	<input type="checkbox"/> Foot Care-Podiatry	<input type="checkbox"/> Oxygen Therapy, Hyperbaric
<input type="checkbox"/> Biofeedback	<input type="checkbox"/> Guided Imagery	<input type="checkbox"/> Pain management
<input type="checkbox"/> Body Composition Testing	<input type="checkbox"/> Hellerwork therapy	<input type="checkbox"/> Physical Medicine Procedures
<input type="checkbox"/> Breath work	<input type="checkbox"/> Herbal consulting/Treatments	<input type="checkbox"/> Physical Therapy/Physiotherapy
<input type="checkbox"/> Chelation therapy	<input type="checkbox"/> Homeopathy-complex	<input type="checkbox"/> Pilates
<input type="checkbox"/> Children's Health Programs	<input type="checkbox"/> Homeopathy-Constitutional/classical	<input type="checkbox"/> Polarity therapy
<input type="checkbox"/> Children-Special Needs Care	<input type="checkbox"/> Homeopathy-personal care	<input type="checkbox"/> Preventive medicine
<input type="checkbox"/> Chinese Herbal Medicine	<input type="checkbox"/> Huddleston Prep for Surgery Workshop	<input type="checkbox"/> Prolotherapy/Sclerotherapy
<input type="checkbox"/> Chiropractic-Activator method	<input type="checkbox"/> Hypnotherapy-clinical	<input type="checkbox"/> Psychotherapy
<input checked="" type="checkbox"/> Chiropractic-Cranial therapy	<input type="checkbox"/> Hypnotism-nonclinical	<input type="checkbox"/> Qi Gong
<input checked="" type="checkbox"/> Chiropractic-Diversified	<input type="checkbox"/> Impairment Ratings	<input type="checkbox"/> Reflexology
<input checked="" type="checkbox"/> Chiropractic-Gonstead	<input type="checkbox"/> Integrative/Holistic Medicine	<input type="checkbox"/> Rehabilitation-Cardiac
<input checked="" type="checkbox"/> Chiropractic-Logan	<input type="checkbox"/> Jin Shin Jytsu/Jin Shi Do	<input checked="" type="checkbox"/> Rehabilitation-Orthopedic
<input type="checkbox"/> Chiropractic-Network	<input type="checkbox"/> Learning Disability Treatment	<input checked="" type="checkbox"/> Rehabilitation-Sports
<input checked="" type="checkbox"/> Chiropractic-Neuromuscular Technique	<input type="checkbox"/> Lifestyle Healthy Coaching	<input type="checkbox"/> Rehabilitation-Stroke & Neurologic
<input checked="" type="checkbox"/> Chiropractic-Nonforce	<input type="checkbox"/> Magnetic therapy	<input type="checkbox"/> Roling
<input type="checkbox"/> Chiropractic-Pettibon	<input type="checkbox"/> Male Health Programs	<input type="checkbox"/> Senior Health Programs
<input checked="" type="checkbox"/> Chiropractic-Sacro occipital	<input checked="" type="checkbox"/> Manipulation-Chiropractic	<input type="checkbox"/> Sensory Integration
<input checked="" type="checkbox"/> Chiropractic-Thompson	<input checked="" type="checkbox"/> Manipulation-Extremity	<input type="checkbox"/> Shiatsu
<input type="checkbox"/> Chiropractic-Touch for Health	<input type="checkbox"/> Manipulation-Naprapathic	<input type="checkbox"/> Sleep Disorder Assess & Treatment
<input checked="" type="checkbox"/> Chiropractic-Upper Cervical	<input checked="" type="checkbox"/> Manipulation-Osteopathic	<input type="checkbox"/> Somatic Education
<input type="checkbox"/> Chronic Illness Management	<input checked="" type="checkbox"/> Manipulation-Spinal	<input type="checkbox"/> Somatoemotional release
<input type="checkbox"/> Colon Hydrotherapy	<input type="checkbox"/> Manipulation-Visceral	<input type="checkbox"/> Sports medicine
<input type="checkbox"/> Color Therapist	<input checked="" type="checkbox"/> Manual Physical Therapy	<input type="checkbox"/> Stop Smoking Program
<input type="checkbox"/> Counseling -Spiritual	<input checked="" type="checkbox"/> Massage-Deep Tissue/Myofascial	<input type="checkbox"/> Stress management
<input type="checkbox"/> Counseling-Marriage & Family	<input type="checkbox"/> Massage-Infant	<input type="checkbox"/> Structural Integration
<input type="checkbox"/> Counseling-Mental Health	<input type="checkbox"/> Massage-Lymphatic/Lymphology	<input type="checkbox"/> Surgical Preparation
<input type="checkbox"/> Counseling-Sexual Problems	<input type="checkbox"/> Massage-Neuro Muscular	<input type="checkbox"/> Tai Chi
<input type="checkbox"/> Cranial Osteopathic Manipulation	<input type="checkbox"/> Massage-Pregnancy	<input type="checkbox"/> Thought Field Counseling & Therapy
<input checked="" type="checkbox"/> Craniosacral therapy	<input type="checkbox"/> Massage-Relaxation	<input type="checkbox"/> TMJ/TMD- Care of Jaw Joint
<input type="checkbox"/> Dance therapy	<input type="checkbox"/> Massage-Sports	<input type="checkbox"/> Tragerwork therapy
<input type="checkbox"/> Detoxification programs	<input type="checkbox"/> Massage-Swedish	<input type="checkbox"/> Trigger point therapy
<input type="checkbox"/> Diet/Supplement Advice	<input checked="" type="checkbox"/> Massage-Therapeutic/Medical	<input type="checkbox"/> Weight management
<input type="checkbox"/> Disability Evaluations	<input type="checkbox"/> Meditation	<input type="checkbox"/> Woman's Health Programs
<input type="checkbox"/> Dry Hydrotherapy	<input type="checkbox"/> Mind/Body Group Classes	<input type="checkbox"/> Yoga
<input type="checkbox"/> Electrodermal screening	<input type="checkbox"/> Mindfulness-Based Stress Reduction Classes	<input type="checkbox"/> Zero Balancing
<input type="checkbox"/> EMDR-Counseling & Therapy	<input type="checkbox"/> Movement therapy	